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Las Vegas Nevada
89107-1103
Jun 19, 2018Office of the General Counsel
Federal Elections Commission
999 "E" Street NW
Washington DC 20463

SENSITIVE

MUR # 7415

By E-Mail and U.S. Mail

Re: Written Complaint against Danny Tarkanian
and Danny Tarkanian for Congress campaign of 2012

Dear Sir / Madame:

Complainant, as undersigned, hereby requests an immediate investigation into an illegal corporate contribution made to a Federal campaign committee, Tarkanian For Congress. Danny Tarkanian was a candidate for Federal office and is also a current candidate for Federal office. In 2012 he used impermitted funds from an LLC he owns and controls, JAMD LLC, directly, and corporate funds from a public charity he owns and controls, the Tarkanian Basketball Academy, indirectly, in each case "in the name of another" to his 2012 Federal campaign committee, Tarkanian For Congress. His use of JAMD LLC was as a conduit for charity funds as will be shown.

Complainant cautions the FEC that Danny Tarkanian has been adjudicated a fraud, specifically fraudulent transfer of assets: "steps were undertaken to both hinder and delay the collection efforts of creditors" in a bankruptcy proceeding (Case-13-20495-mkn-Doc-186 Memorandum Decision). Consequently any documents or testimony taken from him by commission investigators need to be thoroughly checked and positively vetted.

The information identified herein was unknowable until it came to light during candidate Danny Tarkanian's bankruptcy proceedings as found in Federal Bankruptcy court Case 13-20495-mkn. Because the statutes of limitations on these offenses expire in 2019, complainant respectfully requests that the Federal Election Commission, and if necessary the IRS and the FBI, kindly expedite the Commission's investigation into this matter.

Background

In 2018, Danny Tarkanian is again running for US Congress. I say again because this year he is running in Nevada CD3 for the second time. This complaint concerns matters from his 2012 campaign for congress in CD4. Again, the claimed unlawful activities were deliberately concealed and did not come to light until his bankruptcy litigation beginning in 2013 and testimony given under oath by him in May 2014.

Factual Assertions

Charity Problems Tarkanian Basketball Academy Inc. (TarkBBA)

Mr. Tarkanian and his brother George Tarkanian founded a public charity, the Tarkanian Basketball

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Academy, Inc in Las Vegas Nevada in 2001 or 2002. The transcripts and documents provide two different dates. The Exhibits in Case 13-20495-mkn Doc 158 page 25 show 2001.

The hearing transcript in Case 13-20495-mkn Doc 159 page 45 line 25 and page 46 lines 1:3:

25 And then the third one is the Tarkanian
1 Basketball Academy which I briefly discussed which is a
2 sports facility that I started in 2002 I believe with my
3 brother.

The Tarkanian Basketball Academy Inc received its tax exempt status in 2003.

Public charties organized under IRS Section 501(c)(3) are prohibited from participating

"in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

Mr. Tarkanian will no doubt assert that the funds from the Tarkanian Basketball Academy, Inc were funds owed to him from a \$2.2 million loan he made when founding the public charity. A thorough examination of his IRS 990 filings for the Tarkanian Basketball Academy quickly demonstrate that this is impossible. Nowhere on any of the filings from 2004 to 2015 is a liability the size of \$2.2 million carried on the books. From 2004 forward, no liability is carried at all. Complainent asks that the commission look at the page for "assets and liabilities" and specifically under the entry for "Loans from officers, directors, trustees, and key employees" which is blank for the begining of the year and the end of the year. This is true for each of the years 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015. This makes any assertion that funds taken out of Tarkanian Basketball Academy in any of these years untrue. In 2012 alone the Tarkanian Basketball Academy appears to have "loaned" over \$112,221 to JAMD, LLC, a property company over which Danny Tarkanian has checkbook control. The use of a public charity and its "excess cash flow" to bankroll or fund a private for profit business is not permitted. Nor is the diversion of funds from the public charity, directly or indirectly, to fund a political campaign. The details of this information come from a deposition made by Danny Tarkanian on 20 May 2014. As of the day of his deposition the "loan" had not yet been paid back. This for a \$40,000 amount paid out on June 30, 2012. The statute of limitations for FEC matters is five years. Since the activity of indirectly making a payment to his campaign from the charity only came to light as a result of the bankruptcy lawsuit in 2013 and deposition in May 2014, the statute of limitations did start until May 2014.

Case-13-20495-mkn Doc 159, page 71, lines 1:7

Case-13-20495-mkn Doc 159, page 71, lines 8:19 extracted and shown below:

1 Q. Mr. Tarkanian, I believe you mentioned that you had
2 been borrowing -- or JAMD had been borrowing money from
3 the Tarkanian Basketball Academy, right?
4 A. It did on occasions, yes.
5 Q. What did you do with the \$40,000 amount that the
6 Tarkanian Basketball Academy borrowed from JAMD on
7 June 28th of 2012?
8 A. It lent it to JAMD, and it went into JAMD's account.
9 Q. And then didn't that money go into your account
10 after that?
11 A. It went into the congressional campaign account.

12 Well, it probably went into my account first, yes.
13 Q. Okay. And then you withdrew that same \$40,000 on
14 June 28th of 2012, correct?
15 A. Yes.
16 Q. Have you personally repaid that \$40,000 back to the
17 nonprofit that it came out of?
18 A. I didn't personally borrow it from it. JAMD did,
19 and JAMD has not repaid it back yet.

JAMD, LLC Corporation or Partnership

JAMD LLC is a limited liability company (LLC). From the court transcripts, exhibits, and public records it is impossible to determine if JAMD LLC is handled as a corporation or a partnership by its owners. JAMD, LLC lists no corporate stock on its registration. The exhibits provided in the bankruptcy case in Case-13-20495-mkn Doc 123-9 do not indicate a partitioning of JAMD LLC by shares of stock, but, rather by percentages allocated to the various partners. Exhibit C, Pages 13-29. In the absence of a declaration JAMD, LLC is handled as a corporation, it is entirely reasonable to ascertain that JAMD, LLC is a partnership. For purposes of the charge herein it does not matter. JAMD LLC's role in this was as an entity with interests indistinguishable from Danny's and over which he had operational and checkbook control and consequently served as a conduit to mask his actions.

Complainant's Analysis and Understanding of FEC Rules

Campaigns may not accept contributions from the treasury funds of corporations, labor organizations or national banks. This prohibition applies to any incorporated organization, including a nonstock corporation, a trade association, an incorporated membership organization and an incorporated cooperative.

Incorporated charitable organizations — like other corporations — are prohibited from making contributions in connection with federal elections. Unlike most other corporations, charities face additional restrictions on political activity under provisions of the internal revenue code.

Contributions in the name of another: CFR Title 11 Section 110.4

A contribution made by one person in the name of another is prohibited. For example, an individual who has already contributed up to the limit to the campaign may not give money to another person to make a contribution to the same candidate. Similarly, a corporation is prohibited from using bonuses or other methods of reimbursing employees for their contributions.

Contributions

CFR Title 11 Section 114.1 Definitions.

(a) For purposes of part 114— (1) The terms *contribution* and *expenditure* shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union administration, if such loan is made in accordance with 11 CFR 100.82(a) through (d)) to any

candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.

Complainant's Conclusions

Complainant has reviewed applicable FEC regulations. Based on Complainant's read of the transcripts and read of the FEC regulations, complainant reasonably believes that the following CFR Title 11 sections have been violated as discussed above:

CFR 11 Section 110.4

Count (1) Contributions made by one person in the name of another: money from the JAMD LLC Partnership contributed in a manner to appear as a loan from the candidate, Danny Tarkanian.

JAMD LLC was being used as a conduit for monies transferred from the charity.

Count (2) Contributions made by one person in the name of another: money from the Tarkanian Basketball Academy Inc contributed in a manner to appear as a loan made from the candidate, Danny Tarkanian.

CFR 11 Section 114.2

Count(1) Contributions made by a corporation, Tarkanian Basketball Academy, made in a manner to conceal an impermissible contributions made by a corporation.

IRS Title 26 Section 501(c)(3)

Count(1) Contribution made by a corporation, specifically prohibited from participating in political campaigns on behalf of candidates in violation of IRS Title 23 Section 501(c)(3).

Consequently, complainant requests that the Federal Election Commission fully investigate these transactions and take immediate enforcement action.

Kind Regards

<<signed>>

Christopher William Hisgen

[Complainant]

Attachments

Because this is a complex complaint due to the nature of the sources of the contributions, Complainant is providing electronic copies of relevant documents identified in the complaint. Complainant apologizes in advance for making this provision. The court documents can be verified and found on the US Federal Court Pacer case system, the IRS 990 filings can be found via Charity Navigator's IRS 990 retrieval system.

Bankruptcy Proceedings

Case 13-20495-mkn Doc 123-9

Case 13-20495-mkn Doc 159

FEC Complaint RevB

C.W.Hisgen

Case-13-20495-mkn-Doc-186-Memorandum-Decision

Tarkanian Basketball Academy, Inc
IRS 990 filings 2004 through 2015

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CFR Title 11 Section 110.4

§ 110.4 Contributions in the name of another; cash contributions (52 U.S.C. 30122, 30123, 30102(c)(2)).

(a) [Reserved]

(b) Contributions in the name of an other. (1) No person shall—

(i) Make a contribution in the name of another;

(ii) Knowingly permit his or her name to be used to effect that contribution;

(iii) Knowingly help or assist any person in making a contribution in the name of another; or

(iv) Knowingly accept a contribution made by one person in the name of an other.

(2) Examples of contributions in the name of another include—

(i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made, see 11 CFR 110.6; or

(ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.

(c) Cash contributions. (1) With respect to any campaign for nomination for election or election to Federal office, no person shall make contributions to a candidate or political committee of currency of the United States, or of any foreign country, which in the aggregate exceed \$100.

(2) A candidate or committee receiving a cash contribution in excess of \$100 shall promptly return the amount over \$100 to the contributor.

(3) A candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

[54 FR 34112, Aug. 17, 1989, and 54 FR 48580, Nov. 24, 1989, as amended at 54 FR 48582, Nov. 24, 1989; 55 FR 1139, Jan. 11, 1990; 67 FR 69948, Nov. 19, 2002]

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CFR Title 11 Section 114.2

§ 114.2 Prohibitions on contributions, expenditures and electioneering communications.

(a) National banks and corporations organized by authority of any law of Congress are prohibited from making a contribution, as defined in 11 CFR 114.1(a), in connection with any election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office. National banks and corporations organized by authority of any law of Congress are prohibited from making expenditures as defined in 11 CFR 114.1(a) for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State, or Federal office. corporations may engage in the activities permitted by 11 CFR part 114, except to the extent that such activity constitutes a contribution, expenditure, or electioneering communication or is foreclosed by provisions of law other than the Act. (2) The provisions of 11 CFR part 114 apply to the activities of a national bank, or a corporation organized by any law of Congress, in connection with local, State and Federal elections.

(b) Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR part 100, subpart B. Any corporation whatever or any labor organization is prohibited from making a contribution as defined in 11 CFR 114.1(a) in connection with any Federal election.

NOTE TO PARAGRAPH (b): Pursuant to *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), and *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011), corporations and labor organizations may make contributions to nonconnected political committees that make only independent expenditures, or to separate accounts maintained by nonconnected political committees for making only independent expenditures, notwithstanding 11 CFR 114.2(b) and 11 CFR 114.10(a). The Commission has not conducted a rulemaking in response to these cases.

(c) Disbursements by corporations and labor organizations for the election-related activities described in 11 CFR 114.3 and 114.4 will not cause those activities to be contributions when coordinated with any candidate, candidate's agent, candidate's authorized committee(s) or any party committee to the extent permitted in those sections. Coordination beyond that described in 11 CFR 114.3 and 114.4 shall not cause subsequent activities directed at the restricted class to be considered contributions. However, such coordination may be considered evidence that could negate the independence of subsequent communications to those outside the restricted class by the corporation, labor organization or its separate segregated fund, and could result in an in-kind contribution. See 11 CFR 100.16 regarding independent expenditures and coordination with candidates.

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The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations

Under the Internal Revenue Code, all section 501(c)(3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

TITLE 26—INTERNAL REVENUE CODE § 501

§ 501. Exemption from tax on corporations, certain trusts, etc.

(a) Exemption from taxation An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on unrelated business income and certain other activities

An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this sub chapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of exempt organizations

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private share holder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in sub section (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Extracts from Case-13-20495-mkn-Doc-186-Memorandum-Decision

Honorable Judge Mike K. Nakagawa
United States Bankruptcy Judge

Page 43, lines 14:28; Page 44, lines 1:9

B. Disposition With Intent to Hinder, Delay or Defraud.

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In determining whether a debtor disposed of nonexempt assets with intent to hinder, with intent to delay, or with intent to defraud a creditor under Section 522(o), the traditional "badges of fraud" employed in the fraudulent transfer context are often explored. See Stanton, 457 B.R. at 92-93, citing, e.g., Addison v. Seaver (In re Addison), 540 F.3d 805 (8th Cir. 2008), and In re Maronde, 332 B.R. 593 (Bankr.D.Minn. 2005). Only on rare occasions will there be direct proof of the debtor's intent to hinder, delay or defraud, i.e., an admission. A debtor may simply deny that he or she acted with intent to hinder, delay or defraud, or may testify to another purpose for disposing of property. The trier of fact, of course, must assess the credibility of such direct testimony. In evaluating such testimony, the trier of fact must take into consideration all of the circumstantial evidence presented, such as the traditional badges of fraud. See In re XYZ Options, Inc., 154 F.3d 1262, 1271 (11th Cir. 1998).

The nonexclusive list of badges indicating fraud include whether: (1) the transfer was to an insider; (2) the debtor retained possession or control of the property transferred after the transfer; (3) the transfer was disclosed or concealed; (4) the debtor was sued or threatened with suit before the transfer; (5) the transfer was of substantially all of the debtor's assets; (6) the debtor absconded; (7) the debtor removed or concealed assets; (8) the consideration received was reasonably equivalent to the value of the asset transferred; (9) the debtor was insolvent or became insolvent shortly after the transfer; (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and (11) the debtor transferred the essential assets of a business to a lienor who then transferred the assets to an insider. See Stanton, 457 B.R. at 93, citing UNIF. FRAUDULENT TRANSFER ACT § 4(b) (1984). As one would expect, the opposing parties in the present dispute cite cases favorable to their position where the intent of various debtors was examined under the prism of badges of fraud.

Page 46, lines 4:12

In the present case, the timing of the repayment of loans by JAMD and the Daniel Tarkanian congressional campaign fund, and the use of the loan payments to pay down the mortgage on the Residence, all commencing within six weeks after the FDIC Judgment was entered, infers that the Debtors disposed on their claims against JAMD and the congressional campaign fund with the intent to hinder or delay the FDIC's collection efforts. Additionally, because Daniel Tarkanian controlled both the repayment of the loans by JAMD and the congressional campaign fund, and the use of the funds to pay the mortgage, the FDIC maintains that the Debtors' intent to hinder or delay has been established. Moreover, the FDIC argues that the Debtors' explanations for their actions are not credible.

Page 48, lines 22:23; Page 49, lines 1:4

The focus then, is on the credibility of Daniel Tarkanian's explanation that he disposed of the claims against JAMD and the congressional campaign fund with the intent of living close to his parents, or whether he disposed of the claims with intent to hinder or delay collection of the FDIC Judgment. Based on the timing of his actions, the interrelationships between the entities,

and the inconsistencies in the record, the court concludes that both intentions were present. As a result, Section 522(o) applies in this case.

Page 53, lines 7:18; Page 54, lines 1:13

Daniel Tarkanian testified that he had never previously used cashier's checks to make any mortgage payments to Bank of America. All of the cashier's checks were signed by a representative of Wells Fargo Bank because they were written on the bank's funds rather than Daniel Tarkanian's funds. As such, neither the FDIC nor any other creditor could reach those funds by post-judgment levy or pre-judgment attachment of the Debtors' bank accounts.⁴⁰ Because the principal reductions commenced with urgency only after the FDIC Judgment was entered, and the practice of using only cashier's checks for principal payments occurred only after the FDIC Judgment was entered, the court can and does conclude that these steps were undertaken to both hinder and delay the collection efforts of creditors as well as to reduce the principal balance of the mortgage.

This conclusion is bolstered by the fact that at the time the FDIC was actively pursuing a multi-million dollar judgment on its claim, it was not the only creditor holding or perhaps pursuing multi-million dollar claims against the Debtors. When they commenced their bankruptcy proceeding on December 19, 2013, Debtors scheduled possible claims against them exceeding \$17,000,000 by creditors NSB and Stancorp, based on personal guaranties of JAMD's indebtedness. Thus, not only does it appear that the Debtors were confronted with the FDIC Judgment which they admittedly did not have the funds to pay, their primary source of funds for payment of the principal on their mortgage, JAMD, also had other debt obligations exceeding the amount of the FDIC Judgment. Daniel Tarkanian testified that JAMD was upside down several million dollars at the time he was considering the option of making the principal reductions on his mortgage. Moreover, NSB, which apparently extended loans totaling approximately \$14,800,000 to JAMD starting in 2005, was actively monitoring Daniel Tarkanian's management of JAMD during 2012.⁴¹ His use of JAMD's apparently limited and closely monitored resources to repay loans to JAMD's interest-holders, all while never disclosing those loan repayments to NSB, infers an intent to hinder or delay those additional creditors.⁴²

(Note: this is the essence of actual fraud.)

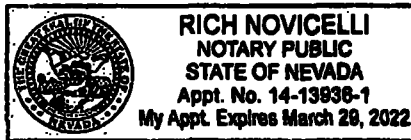
State of Nevada
County of Clark

I, Christopher William Hisgen, swear to the best of my knowledge and belief that the information and contents of my complaint are true.

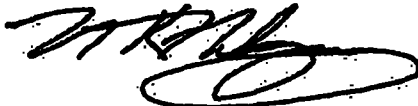
Christopher William Hisgen (cwh)
19 JUN 2018 (date)

Subscribed and sworn to before me on this 19th day of June 2018 by
Christopher William Hisgen

Rich Novicelli
<<signature of notary>> 6-19-18



1000441417-000


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
June 30, 2014

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:)	Case No.: 13-20495-MKN
)	Chapter 7
DANIEL GEORGE JOHN TARKANIAN)	
and AMY MICHELLE TARKANIAN,)	
)	Date: May 20, 2014
Debtors.)	Time: 9:30 a.m.

MEMORANDUM DECISION ON OBJECTION TO CLAIMS OF EXEMPTION¹

On May 20, 2014, the court heard the Objection to Claims of Exemption brought on behalf of Federal Deposit Insurance Corporation as Receiver for La Jolla Bank, FSB ("FDIC"). The appearances of counsel were noted on the record. After oral arguments were presented, the matter was taken under submission.

BACKGROUND

On December 19, 2013, Daniel Tarkanian and Amy Tarkanian ("Debtors") filed a voluntary Chapter 7 petition. (ECF No. 1). The case was assigned for administration to William A. Leonard ("Trustee") and a meeting of creditors was scheduled to be held on January 22, 2014. (ECF No. 4). On January 3, 2014, Debtors filed their schedules of assets and liabilities and other information required by Section 521(a)(1). (ECF No. 12).

¹ In this Memorandum Decision, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of the court. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "NRS" are to provisions of the Nevada Revised Statutes. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "FRE" are to the Federal Rules of Evidence.

On their real property Schedule "A," Debtors listed a property located at 3008 Campbell Circle in Las Vegas, Nevada ("Residence"). Debtors state that the current value of the Residence is \$450,000 and that there is a claim secured by the Residence in the amount of \$248,000. On their secured creditor Schedule "D," Debtors identify Bank of America as having a claim in the amount of \$248,000 secured by the Residence. On their Schedule "C," Debtors claim a homestead exemption in the Residence in the amount of \$202,000 pursuant to NRS 21.090(1)(l) and NRS 115.050. On their non-priority unsecured creditor Schedule "F," Debtors list the Federal Deposit Insurance Corporation ("FDIC") as receiver for La Jolla Bank, FSB, as having a claim of \$16,995,005.17, based on a personal guaranty of business debt. On the same schedule, Debtors also list Nevada State Bank ("NSB") as having a claim in the amount of \$14,800,000.00, based on a personal guaranty of business debt. Stancorp also is listed as having claim in the amount of \$3,076,000 based on a personal guaranty of business debt. On their Schedule "H," Debtors list an entity identified as JAMD, LLC as a co-debtor with respect to both the NSB and the Stancorp obligations.

In Item 4 of their Statement of Financial Affairs ("SOFA"), Debtors disclosed a lawsuit by the FDIC against the Debtors, Jerry Tarkanian, Lois Tarkanian, George Tarkanian, Zafrir Diamant, Josephine Diamant, Douglas R. Johnson, and Debra Johnson, denominated Case No. 10-cv-0980-WQH (KSC), for which a judgment had been entered by the United States District Court for the Southern District of California. Debtors also disclose in Item 18 that they have an interest in or relationship to a variety of entities, including JAMD, LLC, Tark, LLC, Tarkanian Basketball Academy, Inc., Vegas Diamond Properties, LLC, and others.

On January 23, 2014, the Trustee reported that there are assets to administer after having completed the meeting of creditors. (ECF No. 16).²

On February 21, 2014, the Trustee filed an objection to the Debtors' claim of exemption with respect to their interest in JAMD, LLC and Tark, LLC. (ECF No. 38).

Also on February 21, 2014, the FDIC filed the instant objection to the Debtors' claim of

² On May 6, 2014, the Trustee issued a notice indicating a deadline of August 7, 2014, for parties in interest to file proofs of claim in the case. (ECF No. 142).

an exemption with respect to their Residence ("Homestead Objection").³ On March 12, 2014, Debtors filed their response ("Debtors' Response") to the Homestead Objection. (ECF No. 69). The response was accompanied by the declarations of Daniel Tarkanian ("Daniel Declaration") (ECF No. 70), Jodie Diamant ("Jodie Declaration") (ECF No. 71), and Lois Tarkanian ("Lois Declaration") (ECF No. 72). On March 19, 2014, the FDIC filed its reply ("Reply"). (ECF No. 75).

On March 20, 2014, Debtors filed an amended Schedule "C" that eliminated any claim of exemption as to their interest in JAMD, LLC and Tark, LLC. (ECF No. 79). As a result, the Trustee withdrew his objection to those claims of exemption. (ECF No. 80).

On March 26, 2014, an initial hearing on the Homestead Objection was conducted. At the initial hearing, the court was advised that separate counsel had been retained by debtor Amy Tarkanian. An evidentiary hearing on the Homestead Objection was scheduled for May 1, 2014.

On April 14, 2014, a notice of appearance of separate counsel for Amy Tarkanian was filed. (ECF No. 113).

On April 28, 2014, the FDIC filed its trial brief ("FDIC Brief") in support of the Homestead Objection (ECF No. 121) accompanied by a request for judicial notice ("RJN") (ECF No. 122). On the same date, a trial brief in response to the Homestead Objection was filed on behalf of Daniel Tarkanian ("Daniel Brief") (ECF No. 120) as well as a separate trial brief on behalf of Amy Tarkanian ("Amy Brief"). (ECF No. 125).⁴

On May 1, 2014, the evidentiary hearing on the Homestead Objection commenced. Because additional time was required to complete the witnesses' testimony, the hearing was

³ On March 7, 2014, an order was entered approving a stipulation between the Trustee and the Debtors to extend until June 23, 2014, the deadline for which objections to discharge under Section 727 may be filed by the Trustee. (ECF No. 68). On March 17, 2014, an order was entered approving a stipulation between the FDIC and the Debtors to extend until June 23, 2014, the deadline for which objections to discharge under Section 727 or to dischargeability of debt under Section 523 may be filed by the FDIC. (ECF No. 74).

⁴ In the brief filed on behalf of Amy Tarkanian, she maintains that she should be treated as an "innocent spouse" who can claim a homestead in the Residence irrespective of whether the Homestead Objection is meritorious as to Daniel Tarkanian.

continued to May 20, 2014. After completion of the testimony, closing arguments were presented and the matter was taken under submission.

APPLICABLE LEGAL STANDARDS

Under FRBP 4003(b)(1), a party in interest must object, if at all, to a debtor's claim of exemptions within 30 days after conclusion of the meeting of creditors. Failure to timely object bars any subsequent challenge to the validity of the claimed exemption, see Taylor v. Freeland & Kronz, 503 U.S. 638, 642, 112 S.Ct. 1644, 1648 (1992)⁵, except to the extent the debtor subsequently seeks relief under Section 522(f). See FED.R.BANKR.P. 4003(d).

Under FRBP 4003(c), the objecting party has the burden of proving that an exemption is not properly claimed. In Diener v. McBeth (In re Diener), 483 B.R. 196 (B.A.P. 9th Cir. 2012), the appellate panel explained the allocations of the burdens of production and persuasion on an exemption objection as follows:

A claimed exemption is “presumptively valid.” Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (9th Cir. BAP 2010)(citing Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029n. 3 (9th Cir.1999)). “[I]f a party in interest timely objects, ‘the objecting party has the burden of proving that the exemptions are not properly claimed.’” Id. (quoting Rule 4003(c)). Initially, this means that the objecting party has the burden of production and the burden of persuasion. In re Carter, 182 F.3d at 1029 n. 3. The objecting party must produce evidence to rebut the presumptively valid exemption. Id. Once rebutted, the burden of production then shifts to the debtor to come forward with unequivocal evidence that the exemption is proper. Id. The burden of persuasion, however, always remains with the objecting party. Id.

483 B.R. at 203. The standard of proof is by a preponderance of the evidence. See Leavitt v. Alexander (In re Alexander), 472 B.R. 815, 821 (B.A.P. 9th Cir. 2012).

THE TIME LINE OF EVENTS

June 10, 2005	Residence purchased by Daniel Tarkanian (Deed from prior owner to Daniel Tarkanian - Ex. “D”) (Excerpts from Chicago Title Property Profile Report - Ex. “4”) and financed through Adjustable Rate Note dated June 6, 2005 (Note - Ex. “I”); (same - Ex. “3”)
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⁵ The Court’s subsequent decision in Schwab v. Reilly, 560 U.S. 770, 130 S.Ct. 2652 (2010), did not alter the requirement under FRBP 4003(b)(1) that objections challenging the validity or amount of claimed exemptions be filed timely.

December 16, 2005	Daniel and Amy Tarkanian Revocable Family Trust ("Debtors' Family Trust") was formed (Declaration of Trust - Ex. "H")
May 8, 2006	Residence transferred to Daniel Tarkanian and Amy Tarkanian, husband and wife, as community property (Deed from Daniel Tarkanian to Daniel and Amy Tarkanian - Ex. "F"); (Excerpts from Chicago Title Property Profile Report - Ex. "4")
May 8, 2006	Residence transferred from Daniel Tarkanian and Amy Tarkanian to Debtors' Family Trust (Deed from Daniel and Amy Tarkanian to Debtors' Family Trust - Ex. "G"); (Excerpts from Chicago Title Property Profile Report - Ex. "4")
July 12, 2007	La Jolla Bank, FSB, loaned \$14,568,750 to Vegas Diamond Properties, LLC, which loan was personally guarantied by Debtors and family members (Judgment in Civil Action - Ex. "L"); (same - Ex. "1" to RJN)
Summer, 2009	Jerry Tarkanian suffered fall in San Diego
May 6, 2010	FDIC as receiver for La Jolla Bank removes a complaint for breach of personal guaranties from San Diego Superior Court to the United States District Court for Southern District of California ("FDIC Collection Action"). (Order entered April 17, 2012 in FDIC Collection Action - Ex. "2" to RJN)
July 1, 2010	First interest rate change on residential mortgage (Bank of America statement re loan payments - Ex. "6")
November 21, 2011	FDIC files motion for summary judgment on its claims in the FDIC Collection Action. (Statement Regarding Registration of Judgment filed in United States District Court for District of Nevada - Ex. "M")
March, 2011	Jerry Tarkanian suffered heart attack
April 17, 2012	Summary judgment granted in favor of FDIC on defendants' counterclaims in FDIC Collection Action. (Order entered April 17, 2012 in FDIC Collection Action - Ex. "2" to RJN).
May 4, 2012	Summary judgment granted in favor of FDIC on its claims in the FDIC Collection Action. (Judgment in Civil Action - Ex. "L")
May 22, 2012	Judgment entered against Debtors and family members in the amount of \$16,995,005 ("FDIC Judgment") (Judgment in Civil Action - Ex. "L") (same - Ex. "19")
June 3, 2012	Daniel Tarkanian requested loan on cash value of Lois Tarkanian's life insurance policy (Correspondence to Phoenix Home Life - Ex. 1 to Ex. "P"); (same - Ex. "25")
June 3, 2012	Daniel Tarkanian requested loan on cash value of Jerry Tarkanian's life insurance policy (Correspondence to Phoenix Home Life - Ex. 1 to Ex. "P"); (same - Ex. "25")
July 2, 2012	Daniel Tarkanian opened new bank account for Jerry and Lois Tarkanian Irrevocable Trust at Wells Fargo Bank (Consumer Account Application - Ex. "15")

July 3, 2012	Phoenix Life Insurance Company issues two separate checks in the amount of \$110,000 payable to the parents' irrevocable trust (Deposit and withdrawal slips and checks - Ex. 2 to Ex. "P"); (same - Ex. "7")
July 9, 2012	\$220,000 deposited into new bank account for Jerry and Lois Tarkanian Irrevocable Trust (Deposit and withdrawal slips and checks - Ex. 2 to Ex. "P"); (same - Ex. "7")
July 10, 2012	\$220,000 withdrawn from Irrevocable Trust bank account and loaned to JAMD) (Deposit and withdrawal slips and check - Ex. 2 to Ex. "P")
July 11, 2012	Tarkanian Congressional Campaign repaid \$53,755.83 in loans from Daniel Tarkanian (Deposit and withdrawal slips and check copies - Ex. 3 to Ex. "P")
July 12, 2010	JAMD repaid \$250,000 in loans from Daniel Tarkanian (Deposit and withdrawal slips and check copies - Ex. 3 to Ex. "P")
July 12, 2012	Debtors pay \$300,000 to Bank of America (Cashier's checks - Ex. 7 to Ex. "P"); (same - Exs. "10" and "13")
July 27, 2012	Tarkanian Basketball Academy loaned \$50,000 to JAMD (Check and deposit slip - Ex. 4 to Ex. "P"); (Deposit and withdrawal slips and check - Ex. "11")
August 3, 2012	JAMD repays \$50,000 in loans from Debtors. (Deposit and withdrawal slips - Ex. 5 to Ex. "P")
August 3, 2012	Debtors pay \$50,000 to Bank of America (Cashier's checks - Ex. 7 to Ex. "P"); (same - Ex. "13")
August 22, 2012	JAMD repaid \$50,000 in loans from Debtors. (Check - Ex. 6 to Ex. "P"); (Check and cashier's check - Ex. "12")
August 22, 2012	Debtors paid \$50,000 to Bank of America (Cashier's checks - Ex. 7 to Ex. "P"); (same - Ex. "13")
February 6, 2013	Declaration of Homestead recorded (Recording cover page and declaration - Ex. "K"); (same - Ex. "5")
April 10, 2013	Order entered approving stipulation in Zafi and Jodie Diamant bankruptcy proceeding, Case No. 12-23432-LBR, for limited relief from stay to permit registration and recording of FDIC Judgment (Statement Regarding Registration of Judgment filed in United States District Court for District of Nevada - Ex. "M") ⁶

⁶ The docket for the Diamant proceeding reflects that a voluntary Chapter 7 petition was filed on December 6, 2012, and that a discharge was entered on March 26, 2013. A voluntary Chapter 7 proceeding previously was filed on July 31, 2012, by George Tarkanian, denominated Case No. 12-18968-MKN, who also was named as a defendant in the FDIC Collection Action. On February 7, 2013, a discharge was entered in favor of George Tarkanian. On April 3, 2013, a limited order terminating the automatic stay was entered in the George Tarkanian proceeding that allowed the FDIC Judgment to be registered and recorded.

April 19, 2013	FDIC commenced Miscellaneous Matter No. 2:13-ms-00025 in United States District Court for District of Nevada, to register FDIC Judgment (Statement Regarding Registration of Judgment filed in United States District Court for District of Nevada - Ex. "M")
December 19, 2013	Debtors filed joint Chapter 7 petition.

THE EVIDENTIARY RECORD

Forty-three exhibits were admitted into evidence. Six witnesses testified at the hearing and each was subject to cross-examination.

A. The Exhibits⁷.

In addition to the items referenced in the foregoing TIME LINE, the other exhibits admitted at the hearing included copies of the Daniel Declaration (Ex. "1"), the Jodie Declaration (Ex. "20"), an Adjustable Rate Note dated June 6, 2005 (Ex. "3"), a Bank of America loan history statement dated April 9, 2014 (Ex. "6"), a Personal Financial Statement of Daniel Tarkanian dated December 22, 2011 (Ex. "14"), an Affidavit of Financial Condition of Daniel Tarkanian dated December 22, 2011 (Ex. "16"), a Personal Financial Statement of Amy Tarkanian dated December 22, 2011 (Ex. "17"), an Affidavit of Financial Condition of Amy Tarkanian dated December 22, 2011 (Ex. "18"), an email message from NSB to Daniel Tarkanian dated October 16, 2012 (Ex. "22"), a check payable to John Hancock Freedom 529 dated April 29, 2012 (Ex. "23"), a check payable to Lois M. Tarkanian dated June 1, 2012 (Ex. "24"), copies of letters from Danny Tarkanian to Phoenix Home Life dated June 3, 2012, bearing the stamped endorsement guaranty of Wells Fargo Bank (Ex. "25"), a letter from NSB to Daniel Tarkanian dated December 11, 2012 (Ex. "26"), an email message from Daniel Tarkanian to NSB dated October 16, 2012 (Ex. "27"), an assessor's parcel map encompassing the Residence (Ex. "A"), photographs of a walkway between the Residence and the home of Jerry and Lois Tarkanian (Ex. "B"), and portions of Jerry Tarkanian's medical records from Dr. Stephen Miller (Ex. "O").

⁷ The exhibits offered by the FDIC were marked numerically, e.g., "Ex. "1," while the exhibits offered by the Debtors were marked alphabetically, e.g., "Ex. "A."

1 **B. The Witnesses.**

2 Live witness testimony was presented by James Main, Stephen Miller, Lois Tarkanian,
3 Jodie Tarkanian Diamant, Amy Tarkanian, and Daniel Tarkanian.

4 **1. James Main ("Main").**

5 Main is a certified public accountant who has been employed by Daniel
6 Tarkanian since 2007 to prepare income tax returns for the Debtors, as well as the various
7 entities managed by Daniel Tarkanian. Those entities include JAMD, LLC, Tark, LLC, certain
8 trusts for which Daniel Tarkanian is the trustee, and Tarkanian Basketball Academy, LLC. In
9 preparing the tax returns through 2012, Main was provided information from Daniel Tarkanian.
10 Apparently the information was provided in the form of a spreadsheet setting forth loan activity.
11 Main would compare the loan activity set forth in the spreadsheet against the bank statements,
12 mortgage statements, and checkbooks for the entity. Where applicable, a property management
13 report also would be reviewed. Any loan balances would be reflected in the tax return. Main
14 testified that he followed the same process for each return that he prepared.

15 As to the Tarkanian Basketball Academy, Main testified that in 2009, he probably
16 received a general ledger produced through common bookkeeping software known as
17 Quickbooks in lieu of a spreadsheet. He would compare the information on the general ledger
18 against the bank statements and checkbook for the entity. Sometime after 2009, Tarkanian
19 Basketball Academy began using a different bookkeeping system, but Main continued to
20 compare the results to bank statements and the checkbook to prepare the tax return. He testified
21 that Tarkanian Basketball Academy began using Quickbooks again in 2012, and the same
22 process was followed thereafter to prepare the tax return.

23 Main testified that no audits of the returns have ever been requested by the Internal
24 Revenue Service. He has no recollection of discussions with Daniel Tarkanian other than those
25 involving the preparation of the tax returns and did not hear Daniel Tarkanian express any
26 concerns that the Residence would be subject to foreclosure. Main also has no knowledge of the
27 specifics of any loan, never saw any documentation memorializing any loans between JAMD
28 and Daniel Tarkanian, and has no knowledge regarding the financial performance of any of the

1 entities. Main also has never audited to determine whether any loan payments were actually
2 gifts, never audited the disposition of any cash withdrawals, never audited whether funds
3 received from JAMD were compensation or loan repayments, and never asked about Daniel
4 Tarkanian's intentions in making any transfers. Main testified that a copy of the FDIC Judgment
5 was not included in the documents provided by Daniel Tarkanian in preparing the Debtors'
6 income tax return for 2012. He also testified that he does not review bank statements in
7 preparing personal income tax returns.

8 2. Stephen Miller ("Miller").

9 Miller is a doctor of internal medicine who first started treating Jerry Tarkanian in 2009.
10 As of that time, Jerry Tarkanian had a history of prostate cancer for which he was treated in
11 2004. In 2009, he was being treated for thyroid, back, blood pressure, high cholesterol, eye, and
12 balance issues, and was pre-diabetic. As of 2009, Jerry Tarkanian had required more than six
13 stents to be put into his heart.

14 Miller testified that Jerry Tarkanian fell some time in 2009 while in San Diego. Miller
15 saw him in August 2009 in Las Vegas shortly after the incident. He noticed a cognitive decline
16 and believed Jerry Tarkanian to be in far worse condition than his previous visits. Miller also
17 saw Jerry Tarkanian throughout 2010.

18 In March 2010, Miller noted in his medical records that Jerry Tarkanian was "a walking
19 time bomb." He expressed that view to Jerry Tarkanian's family members, including Daniel
20 Tarkanian. Miller saw Jerry Tarkanian in June and October 2010, and he was still suffering
21 from shortness of breath. In December 2010, Miller thought Jerry Tarkanian had decreased
22 considerably in his cognitive abilities. Members of Jerry Tarkanian's family were present at
23 each medical visit, with Daniel Tarkanian there most of the time.

24 By 2011, Miller thought that Jerry Tarkanian's overall health was continuing in a
25 downward spiral. He testified that Jerry Tarkanian suffered another fall in the middle of 2011
26 that injured his elbow. Miller drained the elbow.

27 Miller testified that in March 2012, Jerry Tarkanian suffered a heart attack that required
28 him to be hospitalized for three weeks. As he is not a cardiologist nor did he have hospital

1 privileges, Miller visited Jerry Tarkanian in the hospital, but was not the treating physician.
2 Miller testified that Jerry Tarkanian thereafter started an accelerated decline in his overall health.
3 A family member would always accompany Jerry Tarkanian in subsequent office visits and in
4 telephone communications.

5 Miller testified that some time shortly after the March 2012 heart attack and his release
6 from the hospital, Jerry Tarkanian visited his office on a weekend, pushed in a wheelchair.
7 Miller believed that he was having complications from his medications and that he had torn the
8 Achilles tendon in one of his ankles. Miller recalled that on July 27, 2012, Jerry Tarkanian
9 sought a medical clearance from him to obtain a driver's license, but Miller did not recommend
10 that a license be issued. In September 2012, Jerry Tarkanian visited him again and Miller
11 thought his breathing was better. He testified that Jerry Tarkanian was well enough to visit the
12 Cleveland Clinic for a general medical workup.

13 Miller testified that he believes there has been a marked decline in Jerry Tarkanian's
14 health since March 2012 based on a multitude of factors. Those include his ability to walk, his
15 talking and breathing problems, and his hospitalization. He characterized the hospitalization as
16 the "second bump in the road" with the first "bump in the road" being Jerry Tarkanian's fall in
17 2009.

18 Miller testified that he also treats Lois Tarkanian. He testified that Lois Tarkanian has
19 numerous health problems, including an autoimmune disease, uterine cancer, and
20 dermatopolymyositis.

21 **3. Lois Tarkanian ("Lois").**

22 Lois is the wife of Jerry Tarkanian, and the mother of Daniel Tarkanian, George
23 Tarkanian, Pamela Tarkanian, and Jodie Tarkanian Diamant. She also is a current member of
24 the Las Vegas City Council. She testified that in 1992, she and her husband set up an
25 irrevocable trust for the benefit of her children and grandchildren. She does not know who is the
26 trustee of the trust, nor how much is in the bank account for the trust. Lois does not know how
27 much money was in the account when the \$17,000,000 judgment was entered against her and her
28 family members in May 2012.

1 Lois testified that she does not recall any conversations with Daniel Tarkanian about
2 opening an account for the trust at Wells Fargo Bank. She testified that in her judgment debtor
3 examination in June 2013, she did not know the source of the \$220,000 deposit into the account
4 nor why \$220,000 was withdrawn from the account the following day. Lois did not personally
5 withdraw any cash from her life insurance policies. She does not remember any conversations
6 with Daniel Tarkanian about taking the cash value out of her life insurance policies, but thinks
7 her husband, Jerry Tarkanian, probably did. She was not present for any such conversation nor
8 does she have any specific knowledge that such a conversation actually took place.

9 Lois testified that Daniel Tarkanian had permission to use funds that are resources for
10 business purposes and he would provide information on a paper or would come before the family
11 as a group to vote on it. She did not believe that use of insurance policy funds would be a
12 business use, but does not think she would have objected to it. Lois does not recall that Daniel
13 Tarkanian ever told her that his residence was in foreclosure. She testified that Daniel Tarkanian
14 received permission to transfer \$220,000 out of the life insurance policies some time after the
15 transfer already had been made. Lois also testified that she personally would not take money out
16 of an insurance policy and was shocked to find out later that funds actually could be taken out of
17 the insurance policy.

18 Lois testified that she and her husband had an enclosed walkway constructed between her
19 home and Daniel Tarkanian's residence. Describing a picture of the walkway, she testified that
20 the walls enclosing the walkway bear various paintings by the grandchildren, with names, ages,
21 heights, and the like.

22 Lois testified that she has been married to Jerry Tarkanian for 58 years and that he is of
23 Armenian ancestry. She testified that in Armenian families there is an extremely strong bond
24 between the father and the eldest son. Lois testified that there is such a bond between Daniel
25 Tarkanian and his father, Jerry Tarkanian.

26 Lois testified that she is not strong enough to lift her husband and that having Daniel
27 Tarkanian nearby provides a feeling of security. She testified that her husband had another heart
28 attack within the last three weeks and that she arrived at the house after the heart attack occurred.

1 After she arrived, 911 was called and Jerry Tarkanian was taken to the hospital by the fire
2 department.

3 Lois also testified that her son George Tarkanian is unavailable to assist in the care of
4 Jerry Tarkanian due to his own health issues. Her daughter Pamela works full time and
5 sometimes comes over to take care of her father.

6 **4. Jodie Tarkanian-Diamant ("Jodie").**

7 Jodie is one of Daniel Tarkanian's sisters and lives, with her husband and two children,
8 about a quarter mile away from her parents, Jerry and Lois Tarkanian. Her older sister, Pamela,
9 also lives in Las Vegas, along with her four children, not far away. Her brother George, along
10 with his wife and son, also lives in Las Vegas.

11 Jodie is a registered nurse who initially practiced for eight years, ceased practice after her
12 youngest daughter was born, and then resumed practice in 2013. She visits her father, Jerry
13 Tarkanian, at least twice per week, and puts together his medications in a pill box. Her brother
14 Daniel Tarkanian visits her father at least two days during the week and usually spends Sundays
15 at her father's home as well. Because of Jodie's medical background, the family frequently asks
16 her questions about her father's medical care. She testified that as the oldest son of the family,
17 Daniel Tarkanian is vocal in his opinions and the family looks to him for leadership. Jodie also
18 testified that Daniel Tarkanian's opinion regarding their father is more valuable to her because
19 he sees his father more frequently due to his close proximity. In addition, Daniel Tarkanian
20 spends far more time with their father than any of their siblings, even on the days when Jodie is
21 supposed to be there. When phone calls late at night are not answered by their parents, Daniel
22 Tarkanian is available to go to their parents' house to check on them. Jodie is aware that the
23 Debtors' residence is connected to her parents' home by a walkway and is comforted by her
24 brother's close proximity. She testified that at some point in time she had told her brother the
25 same thing.

26 Jodie testified that as an example, a couple of weeks ago, her nephews were visiting Jerry
27 Tarkanian and saw him slumped over in his chair. They were unable to reach Jodie and others
28 by telephone, so they went and got Daniel Tarkanian at the Residence.

1 She believes that Jerry Tarkanian has had nine or ten stents put in his heart, one over the
2 past summer. Jodie testified that her father had a serious fall in San Diego during the summer of
3 2009 where he broke his shoulder and also had to have a bone spur removed from his back. She
4 believes that her father was in the hospital and/or in rehabilitation for around six weeks. After
5 Jerry Tarkanian returned home, Jodie believes that both a physical therapist and an occupational
6 therapist came to the house, but does not recall if her father had nursing care on a daily basis.
7 She believes that a nurse visited perhaps once a week to determine whether physical and
8 occupational therapy continued to be necessary. Jodie described the fall in 2009 as the first
9 major incident with her father's health.

10 Jodie testified that she was present in March 2012 when Jerry Tarkanian suffered a heart
11 attack. While visiting a dermatologist, her father was having difficulty walking and breathing,
12 and so she took him to a cardiologist who practiced in the office across the hallway. Thereafter,
13 her father was taken to a local emergency room where she was informed that Jerry Tarkanian
14 was having a heart attack. After her father got out of the hospital, he was weaker, had difficulty
15 talking, difficulty swallowing, and difficulty walking.

16 Jodie also testified that the family has been trying to have meetings each month regarding
17 the health of the parents, but have not had a meeting for the past couple of months. In addition
18 to Jerry Tarkanian's health problems, Lois Tarkanian has cancer, Lupus, and fibroids.

19 Jodie also testified that in March 2014, Jerry Tarkanian was able to attend games played
20 by the University of Nevada Las Vegas ("UNLV") basketball team prior to the start of the
21 NCAA basketball tournament. He also went with Daniel Tarkanian to Dallas where the final
22 four teams in the tournament played for the national championship, but he did not attend any
23 games.

24 Jodie never had any conversation with the Debtors before they purchased the Residence
25 located near their parents, nor did she know anything about how the purchase was financed. She
26 does not recall any conversation with the Debtors in 2012 about them being worried about losing
27 their home nor of any cost-cutting measures to make payments on their home. She never
28 questioned any of the financial decisions that Daniel Tarkanian made on behalf of their parents.

1 Jodie testified that her husband had loaned \$400,000 to JAMD out of a line of credit, in
2 order to help construct a building on certain hospital property. She testified that she is a part
3 owner of JAMD and that her husband was repaid the moneys that were loaned. She testified that
4 Daniel Tarkanian manages JAMD and makes the financial decisions. Jodie was never told by
5 Daniel Tarkanian that \$220,000 would be drawn from her parents' life insurance policies and out
6 of the Jerry and Lois Tarkanian Irrevocable Trust to loan to JAMD, which ultimately would be
7 used to pay down the Debtors' mortgage. She was unaware of the transaction occurring until
8 about a year ago and she knows nothing about nor was she aware of any loans between JAMD
9 and Daniel Tarkanian. She has never discussed the transaction with her parents nor does she
10 recall any conversations with her siblings about the transactions when they were taking place.
11 Jodie testified that there is a family reunion every summer where an informal family meeting
12 would take place. During the family meetings, Daniel Tarkanian would discuss the status of the
13 various properties owned by the family. Only recently did she become aware of any loans the
14 Debtors had made to JAMD.

15 Jodie testified that at the informal family meetings, Daniel Tarkanian would give them
16 statements or something that she had no interest in. Her husband attended the meetings and
17 thought everything was fine. Jodie has not reviewed any of the financial spreadsheets lately
18 concerning the outstanding loans owed by JAMD.⁸

19 **5. Amy Tarkanian ("Amy"):**

20 Amy married Daniel Tarkanian in 2001 and they have four children. She testified that at
21 some point in time she was an actress in Los Angeles and that she also worked in the theater as
22 well.

23 Amy testified that she leaves all of her finances to her husband because she did not
24 manage her personal finances at all well before they got married.⁹ She has no idea about the
25

26 ⁸ The matters stated in the Jodie Declaration were consistent with Jodie's testimony in
27 court.

28 ⁹ Amy was not asked to explain the personal financial difficulties that led her to this
decision, nor was she asked about her educational background.

1 terms of the mortgage on the Residence and does not know if it was ever refinanced. She does
2 not know the amount of tuition paid for one of her children in private school. She does not recall
3 ever having a conversation with her husband about whether they could afford it. Sometimes she
4 checks the mail, but she sets aside for her husband anything that does not have her name on it.
5 She does not open any credit card bills and gives no thought to whether any bills get paid or not.

6 Amy testified that she does not know if she has any bank or investment accounts for her
7 children. She does not know if there are any investment accounts for herself or her husband.
8 She has never gone online to look at any bank or investment accounts for herself or her children.
9 Amy testified that Daniel Tarkanian runs the show at home and she just makes sure the kids get
10 fed. She does not discuss household finances with her husband and does not know how bills
11 come in for basic living expenses like water, utilities, or garbage. Her husband gives her cash or
12 credit cards to buy groceries, but she does not know which banks issue the credit cards. She
13 does not know the amount of the monthly mortgage payment on her home and has never known.
14 She testified that she does not know how her husband makes the mortgage payments. Amy
15 testified that she does not remember who her husband was working for in 2005 when they
16 bought the house. She does not know how much money Daniel Tarkanian was making in 2005,
17 nor how much money he earns today.

18 Amy did acknowledge signing a check dated April 29, 2012, in the amount of \$7,500
19 payable to John Hancock Freedom 529, but testified that she does not know what the account is.
20 She also acknowledged signing a check dated June 1, 2012, in the amount of \$2,000 payable to
21 her daughter, Lois M. Tarkanian, which may have been a birthday gift in an amount to make up
22 for moneys previously given to the grandchildren by her husband's parents.

23 Amy testified that Daniel Tarkanian once mentioned the importance of keeping the
24 Residence after Jerry Tarkanian's heart attack and doing whatever it takes, probably through
25 refinancing, but nothing beyond that. She testified that she has heard of the term underwater
26 with regard to a mortgage but does not know whether the Residence has been refinanced. She
27 testified that she believes it to be important to stay in the Residence because her children attend
28 schools nearby, the Residence is close to the family, and her husband wants to remain near to

1 Jerry Tarkanian due to his declining health condition.

2 Amy testified that she is aware of the \$17,000,000 judgment entered against her, as well
3 as her husband, but has no idea how the process of paying the judgment would work. Although
4 she does not know her finances, she is pretty sure that she did not have \$16.9 million dollars in
5 assets to pay the judgment when it was entered against her in May 2012. She testified that she
6 was not interested in trying to figure out how to respond to the judgment because she left that up
7 to her husband. She does not know if she had any equity in the Residence at the time the
8 judgment was entered and does not know if she has any equity in the Residence today. Amy also
9 testified that she never went with her husband to discuss with any accountants or financial
10 advisors how to satisfy the judgment. She also had no conversations with any family members
11 about the judgment, nor did she do an analysis of how to satisfy the judgment. She discussed no
12 options with Daniel Tarkanian about satisfying the judgment or protecting her assets other than
13 filing for bankruptcy. Amy recalls no discussion with her husband about taking \$220,000 out of
14 Jerry and Lois Tarkanian's life insurance policies or paying \$400,000 to the mortgage holder in
15 July and August 2012. Amy testified that she knows that the entity JAMD exists, but has never
16 asked her husband about it. She knows nothing about \$400,000 having come from JAMD's
17 bank accounts into her account and then to Bank of America.

18 Amy testified that the Tarkanian family has meetings to discuss family business matters
19 but she does not attend them. She is not aware of the large principal payment made on the
20 Residence in 2012 and never discussed it with her husband or participated in any way in making
21 the payment.

22 Amy testified that in January 2013, she started a job as a political pundit representing the
23 conservative agenda where she debates important political positions and topics. She testified
24 that on a political show called "What's Your Point" she engages in almost daily discourse with
25 Rory Reid. The televised show is on Channel 3 and she is paid an annual salary.

26 Amy testified that she has been selected as a member of the Silver State Excellence of
27 Women Program geared to recruit women to run for political office or to participate in the
28 political process. She testified that she also served on the Clark County Republican Executive

1 Board and was once elected and re-elected as the Nevada Republican Party chairperson. Amy
2 testified that she served as the leader of the Republican Party in Nevada after she was elected the
3 chairperson. She testified that as party leader, she would raise funds and an executive director
4 and treasurer would take care of the money. She testified that fund-raising only required talking
5 about obtaining money rather than about how much money is needed because the amount needed
6 is unlimited. Amy testified that in her roles on the executive board and as party leader, the
7 executive director and treasurer would make the financial decisions, and she would go fund-
8 raise. She testified that when Daniel Tarkanian ran for political office in 2012, she campaigned
9 for him going door to door.

10 Amy also testified that her job at Channel 3 is her first job making money personally
11 after she married in 2001, other than her job in real estate. She testified that she once had a real
12 estate license, but does not recall whether she was involved in two or more transactions. She
13 believes she may have been involved in the purchase of the Residence. She testified that she was
14 involved in a transaction involving commercial property, but does not remember the property or
15 the persons involved in the transaction. She testified that her husband Daniel Tarkanian was
16 involved in every transaction, and that someone would bring her documents and she would sign
17 them. She does not recall who brought her the documents.

18 Amy testified that she does not remember how she used her real estate license in the
19 purchase of the Residence. She does not recall whether she received a commission, who she
20 represented on the sale, or whether the home originally was purchased in her husband's name as
21 separate property. She testified that she did not talk to her husband about whether they could
22 afford to purchase the home because she trusted him. She also testified that she does not know
23 whether she is even on title to the house.

24 Amy testified that when the Residence was purchased in 2005, she intended that her
25 children be raised in the house as long as they needed it. When shown a copy of the homestead
26 declaration for the Residence that she signed, Amy testified that she does not understand what it
27 is even though she once was a licensed realtor. She testified that she signed the homestead
28 declaration in January 2013 but does not remember reading it. When asked if she typically reads

1 documents before signing them, Amy testified that she just signs them.

2 Amy testified that she does not recall signing a personal financial statement in 2011,
3 although she recognized her signature on the copy shown to her. She testified that she may have
4 read the document, but does not remember. Because she does not remember reading the
5 document, Amy testified that she does not know if the statements made in the financial statement
6 were accurate as of December 22, 2011. She testified that she does not know if the \$12,000
7 monthly income figure for her husband was accurate and that her husband came up with that
8 figure. She also did not do anything to follow up on the accuracy of the income figure because
9 she did not know where Daniel Tarkanian worked in 2011. Amy testified that she did not
10 remember knowing the amount of the monthly mortgage payment when the personal financial
11 statement was filled out. She also testified that she has no idea where a figure for \$15,000 cash
12 on hand or a figure of \$24,500 in other assets came from. Amy testified that she did not
13 participate in the preparation of the personal financial statement nor did she provide any of the
14 information in it. Additionally, she did not ask her husband whether the information was correct
15 before she signed it.

16 Amy testified her signature appears on an affidavit of financial condition. She testified
17 that she does not remember if she did anything to confirm or verify any of the information
18 appearing in the affidavit. She testified that she signs every document that is handed to her by
19 Daniel Tarkanian. She does not remember if the investment account figures in the affidavit were
20 accurate when she signed the document. Amy testified that she did not participate in the
21 preparation of the affidavit and assumes it was prepared by her husband.

22 **6. Daniel Tarkanian.**¹⁰

23 Daniel Tarkanian purchased the six bedroom, five bathroom Residence in his own name
24 in 2005, then transferred it to Amy and himself as husband and wife. He testified that he initially
25 took title only in his name because his wife's credit was not very good and the interest rate
26

27 ¹⁰ Daniel Tarkanian testified at length on two different days both as a witness for the
28 FDIC and as a witness for the Debtors. This non-sequential summary of his testimony roughly
follows the order in which his testimony was elicited at the hearing.

1 would be higher if she was on title. Thereafter, it was transferred to him and his wife as
2 community property, and then to the Daniel and Amy Tarkanian Revocable Family Trust. He
3 testified that title to the Residence remains in that family trust. Daniel Tarkanian testified that
4 the purchase price was \$810,000, with \$162,000 as a down payment, requiring a loan of
5 \$648,000 to complete the purchase. He testified that the down payment was obtained from the
6 sale of their prior residence. He testified that the purchase was financed through a 30-year,
7 adjustable rate mortgage, requiring interest-only payments. The loan application provided for
8 initial monthly mortgage payments of around \$3,400. He testified that the original interest rate
9 was 5.75 percent and he was paying close to \$3,800 a month. He testified that he purchased the
10 Residence primarily because it was close to his parents' home.

11 Daniel Tarkanian testified that he has always taken care of the family finances during his
12 marriage to Amy. His wife has no interest in the finances and had credit problems in the past.
13 He testified that he has taken complete control over payments being made and books being kept.
14 Amy has no involvement in the mortgage payments for the Residence and does not review the
15 monthly mortgage statements. Daniel Tarkanian testified that Amy was not involved in the
16 transactions to pay down the mortgage in 2012. She did not attend any of the meetings where
17 family business was involved and she had no interest in the meetings

18 He testified that the only principal payments on the loan were made in July and August
19 2012. Until that time, he had only paid interest on the loan. As a result of the principal payment,
20 the balance remaining on the loan was around \$248,000. Daniel Tarkanian testified that at the
21 time of the principal payments, he had not had an appraisal done on the Residence, but did have
22 a tax assessor's statement for that time period.

23 Daniel Tarkanian testified that part of the principal payment came from proceeds from
24 his parents' irrevocable trust that had insurance policies on his parents' lives. He testified that he
25 and his siblings are the beneficiaries of the parents' trust, and that the trust is not a judgment
26 debtor on the FDIC judgment. Two separate checks, each in the amount of \$110,000, were
27 issued by the Phoenix Life Insurance Company. Both checks are dated July 3, 2012. He
28 testified that on July 2, 2012, he applied to open a bank account for his parents' trust at a nearby

1 branch of Wells Fargo Bank because it was located much closer than the only Ameritrade office
2 more than thirty minutes away. He testified that on July 9, 2012, he deposited two checks that
3 he received from Phoenix Life Insurance Company into the account.

4 Danny Tarkanian testified that he withdrew the funds from the parents' trust account on
5 July 10, 2012, and the funds were immediately loaned by the parents' trust to JAMD. Because
6 he had a close-knit family and the transaction was within family members, the loan was not
7 formalized by a promissory note, but was reported on an Excel spreadsheet provided to the
8 accountant who prepared the tax returns. Daniel Tarkanian testified that he believed it would
9 raise fiduciary questions and possibly a breach of fiduciary duty if he had transferred the funds
10 directly to himself to pay down his mortgage. He testified that JAMD had borrowed funds from
11 the trust on at least seven occasions over the past several years. He testified that the decisions to
12 borrow funds from the life insurance policies to maintain JAMD's survival depended on the
13 interest charged by other sources and whether the insurance policies were the only source of
14 income. Daniel Tarkanian testified that he never told the other beneficiaries of his parents' trust
15 that he was borrowing money to loan to JAMD in advance of doing so. He did not do so before
16 the \$220,000 was borrowed by JAMD to repay its loans to him, nor did he do so before any of
17 the other six times that JAMD borrowed money from the parents' trust. He testified that he is
18 not the trustee of the Lois Tarkanian Irrevocable Trust and that Judy Steel is the trustee. He is
19 the trustee of two of his parents' irrevocable trusts as well as the manager of all of the family
20 entities that he described.

21 Daniel Tarkanian testified that on July 12, 2012, JAMD used the \$220,000 in funds
22 borrowed from the parents' trust to repay Daniel Tarkanian for loans that he previously had
23 made to JAMD. He believed it was permissible to do so because his parents owned their
24 irrevocable trust and also owned an interest in JAMD, and therefore had a mutual interest. As
25 the parents' trust also had an interest in JAMD, he testified that the trust had an interest in
26 ensuring that JAMD would be able to remain solvent and survive. He never told his siblings in
27 advance of doing so and has never made any other loans from the trust to JAMD that were used
28

1 to pay down his mortgage.¹¹ Daniel Tarkanian testified that he would have informed his siblings
2 of any transfers during their annual meetings.

3 Daniel Tarkanian testified that when he received the loan repayment from JAMD, he
4 deposited the funds into his personal account and then had a cashier's check made payable to
5 Bank of America as a principal reduction on the mortgage. He testified that the amount of the
6 cashier's check was \$300,000, consisting of \$250,000 from JAMD and an additional \$50,000
7 that was a repayment of a loan that he had made to the Daniel Tarkanian congressional account.
8 The same day he deposited \$53,000 into his personal account that he received from the Daniel
9 Tarkanian congressional account. He testified that he was running for Congress in 2012 and had
10 loaned his campaign money during the primary. After he won the primary, campaign donations
11 were received from which he was repaid the money he had loaned the campaign. He testified
12 that the \$250,000 from JAMD included the \$220,000 JAMD had borrowed from his parents'
13 trust plus \$30,000 from JAMD's operational income.

14 Daniel Tarkanian testified that on August 3, 2012, a cashier's check in the amount of
15 \$50,000 was made payable to Bank of America. The source of the \$50,000 was the Tarkanian
16 Basketball Academy, a non-profit entity that operates a sports facility, which had loaned the
17 funds to JAMD. At the time, the Academy had excess cash because it received its biggest
18 revenues in June and July for the summer basketball tournaments. Daniel Tarkanian testified
19 that after JAMD borrowed the \$50,000 from the Tarkanian Basketball Academy, JAMD paid
20 back \$50,000 that JAMD had borrowed from Daniel Tarkanian. Daniel Tarkanian then obtained
21 the cashier's check payable to Bank of America. He testified that Tarkanian Basketball
22 Academy could not have given \$50,000 directly to him because he was not working for the
23 Academy at that time as he was involved in the last two months of his congressional campaign.
24 Daniel Tarkanian testified that the funds were loaned to JAMD but that no promissory note was
25 prepared. He testified that the loan was documented on the Excel spreadsheets, ledger sheets,
26

27 ¹¹ In his declaration submitted along with the Debtors' Response to the Homestead
28 Objection, Daniel Tarkanian stated that the payments made to reduce the principal on his
Residence were made "after consulting with family members." Daniel Declaration at ¶ 8.

1 cancelled check, and bank account statements provided to the accountant. He does not
2 remember whether he told Judith Flynn, who signed the check from the Academy payable to
3 JAMD, that the \$50,000 was a loan. He testified that he was the only person authorized to
4 decide whether or not the loan was a reasonable use of the Academy's cash. He also testified
5 that if the Tarkanian Basketball Academy had excess cash ten months earlier, it could have
6 loaned \$50,000 to JAMD at that time. Daniel Tarkanian testified that neither JAMD nor the
7 Tarkanian Basketball Academy are debtors on the FDIC judgment.

8 Daniel Tarkanian testified that JAMD was opened in 2007 and owns a commercial
9 development project consisting of fifteen acres of land across from the San Martin Hospital. He
10 made all management and operational decisions for JAMD in 2012, including how the money
11 would be spent. He testified that JAMD's need to repay loans was based on whether the party
12 who loaned funds to JAMD needed to be paid back. Daniel Tarkanian testified that he did have
13 a promissory note from JAMD in the early 2000s, but that he cannot find a copy of his note. He
14 testified that he receives five percent interest on the loans he makes to JAMD. He testified that
15 JAMD borrowed money from family members with a policy or understanding that if JAMD had
16 the ability to do so, it would repay the loans any time the lender needed the money back. He
17 testified that the policy or understanding is not in writing because it is between family members.

18 Daniel Tarkanian testified that he is the sole person who decides whether it is necessary
19 for JAMD to repay the loans. One such loan was for \$450,000 that JAMD borrowed from Zafi
20 Diamant for the construction of a building which was paid back when Zafi needed to pay back
21 his line of credit. He testified that there was another loan to JAMD from the Diamants, but that
22 it has not been paid off and has a balance of \$73,005. He testified that another example was
23 when he borrowed against his parents' life insurance and loaned the funds to JAMD, which then
24 repaid the \$250,000 it had borrowed from his parents. He testified that his parents needed to
25 retrofit their home after his father's illness. Daniel Tarkanian testified that after he was repaid
26 the loans in 2012, JAMD also repaid loans to his parents, to the Tarkanian Family Limited
27 Partnership, to the Lois Tarkanian Revocable Trust, to the Jerry and Lois Tarkanian Irrevocable
28

1 Trust, and perhaps others.¹²

2 Daniel Tarkanian testified that at the time Tarkanian Basketball Academy loaned the
3 \$50,000 to JAMD, there were no promissory notes to Daniel Tarkanian coming due that needed
4 to be paid. He testified that neither JAMD nor the Tarkanian Basketball Academy are debtors
5 on the FDIC judgment, so that the FDIC could not pursue the Academy for the \$50,000 loaned to
6 JAMD. Daniel Tarkanian testified that the FDIC could only pursue JAMD for the moneys it
7 owed to him.

8 Daniel Tarkanian testified that on August 22, 2012, JAMD repaid him another \$50,000
9 by a check that he cashed and converted to a cashier's check payable to Bank of America. It was
10 to be applied to reduce the principal owed on the mortgage. He testified that he usually made
11 mortgage payments by personal checks and the use of cashier's checks was not typical.

12 Daniel Tarkanian testified that before the principal payments were made on his mortgage
13 in 2012, he had been sued on a personal guaranty of a \$14 million loan from La Jolla Bank. The
14 loan had been guarantied by his wife, his parents, his sister Jodie and her husband, and his
15 brother George. He testified that the FDIC judgment was entered on May 22, 2012, about six
16 weeks before he started making principal payments on his mortgage. Daniel Tarkanian testified
17 that he could not pay the \$17 million FDIC judgment as he did not have that kind of money. He
18 also testified that for that reason he had no intention of paying the judgment.

19 Daniel Tarkanian testified that he signed a personal financial statement dated December
20 22, 2011. He testified that he signed an affidavit of financial condition on December 22, 2011.
21 On the affidavit he listed a receivable from JAMD in the amount of \$670,379. He testified that
22 the receivable would have been reduced by at least \$350,000 due to the subsequent loan
23

24 ¹² In his declaration, Daniel Tarkanian stated that "Over a period of twelve years,
25 members of the Tarkanian family and its entities loaned JAMD over \$2 million to pay for the
26 construction. The loans were memorialized with promissory notes, and the loans and
27 repayments of loans were kept as part of the records of JAMD...On September 29, 2006, I made
28 my first loan to JAMD. Over the course of seven and a half years, I loaned JAMD
\$1,181,814.00 and was repaid \$1,428,000. (The repayments included interest at 5%).
Approximately \$984,900.00 in payments were made to me prior to entry of the Judgment in
California in favor of FDIC-R, and all of the repayments were made prior to the FDIC
registering the Judgment in Nevada on April 17, 2013." Daniel Declaration at ¶ 15.

1 repayments in 2012. Daniel Tarkanian testified that in July 2010, JAMD owed him \$748,465.

2 Daniel Tarkanian testified that he personally guarantied a \$14 million loan that Nevada
3 State Bank had made to JAMD. He testified that for six months in 2012 he was being paid a
4 salary by JAMD. He testified that Nevada State Bank objected to JAMD's payment of property
5 management fees and legal fees to Daniel Tarkanian. He testified that he received a letter from
6 Nevada State Bank dated December 11, 2012, accusing him of manipulating accounting
7 practices by claiming attorneys fees of \$7,500 per month without substantiation of the amount.
8 He testified that he did not disclose to Nevada State Bank the loan repayments made by JAMD
9 to Daniel Tarkanian because those repayments were not an operating expense such as
10 management and legal fees, and did not have to be disclosed under the bank's loan documents.
11 He testified that from the time that Nevada State Bank had loaned money in 2005, it was not
12 given notice of any of the 40 to 50 loan repayments that JAMD made to his siblings, himself and
13 the trusts, because it was not relevant to the loan documents.

14 Daniel Tarkanian testified that he and his family members also formed a business called
15 Tark, LLC, in 1999. That entity owns a retail building located in Clovis, California. He testified
16 that he manages Tark, LLC, including review and approval of leases and working with leasing
17 agents. He also reviews and approves leases for JAMD. Daniel Tarkanian testified that at the
18 end of 2013, Tark, LLC, took out a loan of \$822,000, by refinancing its property. Daniel
19 Tarkanian testified that the refinancing was a smart business decision because the loan was
20 obtained at a four percent interest rate and the moneys received from the loan are nontaxable.
21 He testified that part of the loan proceeds were used to repay a loan that Tark, LLC had received
22 from the Tarkanian Basketball Academy. He testified that another part of the loan proceeds
23 were loaned to JAMD which in turn used the funds to repay the Jerry and Lois Tarkanian
24 Irrevocable Trust for the \$220,000 it had borrowed against the Phoenix Life Insurance policy.

25 Daniel Tarkanian testified that in 2010, his brother George ran the Tarkanian Basketball
26 Academy because Daniel Tarkanian was running for the United States Senate. He testified that
27 due to a serious illness, George had to step down from running the facility. George's wife was
28 doing the bookkeeping and running the office while George ran the basketball programs. At the

1 end of August 2010, Pete Zopolos came in to run the facility and Amy came in to help transition
2 from George to Pete. He testified that his wife Amy was paid to help organize the office and
3 files, and do other things.

4 Daniel Tarkanian testified that he made the principal payments on the mortgage in 2012
5 because he was afraid that the payments would go up some time in the future and he would not
6 be able to afford them. He testified that his mortgage payments in fact had been going down, but
7 that he believed that interest rates would start going up because interest rates were at historical
8 lows. He testified that if the interest rate went back to the initial rate, his monthly mortgage
9 payment would go up by \$2,300, and if the interest rate went up to 7.5 or 8.0 percent, he would
10 be paying \$3,500 or \$4,000 more per month.

11 Daniel Tarkanian testified that interest rates have not gone up, but if so, very little. He
12 testified that in July 2010, the interest rate on his mortgage was about to change. He testified
13 that even though JAMD owed him \$748,465 at the time, he does not know if JAMD had the cash
14 flow to repay the amounts owed. Daniel Tarkanian testified that JAMD could have borrowed
15 against his parents life insurance policies through his parents' trust, but that JAMD had already
16 borrowed \$144,000 in April 2010. He testified that Jerry Tarkanian's health had begun to fail in
17 2009, but he did not attempt to pay down or refinance his mortgage or engage in any transaction
18 similar to principal reductions he made in 2012.

19 Daniel Tarkanian testified that he did not record a homestead declaration in 2005 when
20 he purchased the Residence. He testified that he and his wife filed the homestead declaration in
21 January 2013, but acknowledged that he had previously testified that he could not explain the
22 reason for delaying the filing of the homestead declaration because of the attorney-client
23 privilege. He testified that as of July 2012, he was current on his mortgage payments and had
24 not received any notices of default. He testified that the Residence was not in foreclosure and
25 that he could have made the payment the next month. Daniel Tarkanian testified that he was
26 worried that the interest rate would rise and he would not be able to make the higher monthly
27 payment.

28 Daniel Tarkanian testified that he believed he had three options in July 2012. He testified

1 that his first option was to remain in the home and wait for interest rates to increase from \$1,500
2 currently to as high as \$3,700. He testified that the monthly interest-only payment on the loan
3 started at \$3,105 for the first five years, then dropped to \$1,552 in July 2010, then dropped to
4 \$1,485 in February 2011, then dropped to \$1,417.50 in August 2011, then remained at \$1,417 in
5 November 2011, then increased to \$1,552 in February 2012, and then dropped to \$1,209 in July
6 2012. He testified that Tarkanian Basketball Academy's lease with Station Casinos had expired
7 and the Academy's revenue could end if it is required to move. He also testified that JAMD was
8 upside down several million dollars and would not be a source of income if it went under. He
9 testified that his second option was to walk away from the Residence, let it be foreclosed or short
10 sold, and then purchase another home away from his father. Daniel Tarkanian testified that his
11 third option was to obtain repayment of the funds loaned to JAMD and then pay down the
12 mortgage. He testified that as a result of the principal reductions made in 2012, the monthly
13 interest-only payment had dropped to \$869.00 in August 2012. He testified that the \$400,000 in
14 transfers during July and August 2012 were the first time he had ever made any payments of
15 principal on the mortgage.

16 Daniel Tarkanian testified that he graduated from the UNLV with a business finance
17 degree and then graduated from the University of San Diego School of Law. He is admitted to
18 the Nevada bar and currently is a licensed attorney. Daniel Tarkanian testified that he started a
19 law firm in January 2014, Tarkanian & Knight Law Group, but does not practice law except for
20 dealing with his family's various business entities. He testified that he does not know if his law
21 firm website advertises him as a lawyer specializing in business law and consulting. He testified
22 that he provides oversight to his partner who just passed the bar and he practices law for his
23 family's entities. He could recall one instance where he made a collection call for a client, but
24 that he has never gone to court, prepared any documents, or any of that stuff.

25 Daniel Tarkanian testified that he is very close to his father, Jerry Tarkanian, as are all
26 eldest sons of Armenian ancestry with their fathers. He testified that he named his only son,
27 Jerry, after his father. Daniel Tarkanian testified that he was a ball boy for Jerry Tarkanian and
28 traveled with the basketball teams that his father coached. He testified that Jerry Tarkanian

1 coached at San Joaquin Memorial High School, Redlands High School, Antelope Valley High
2 School, Riverside City College, Pasadena City College, Long Beach State, UNLV, and Fresno
3 State. He played basketball for his father for one year at a junior college and then for three years
4 at UNLV where his father coached a team that was ranked number one in the nation. He
5 testified that his father won a national championship while coaching at UNLV, went to the Final
6 Four of the collegiate national basketball tournament four times, and had the highest winning
7 percentage of any coach when he left UNLV. Daniel Tarkanian testified that after graduating
8 from law school, he practiced law for a few years and left practice to coach with his father at
9 Fresno State. At the end of Jerry Tarkanian's employment at Fresno State, Daniel Tarkanian
10 testified that he acted as his father's attorney at a hearing before the NCAA infractions
11 committee. He testified that during the course of his life, he has spent much of his time with his
12 father, working with his father, and defending his father. Daniel Tarkanian testified that about a
13 month ago, he flew with Jerry Tarkanian to Dallas for a coaching convention where the Final
14 Four basketball tournament was held.

15 Daniel Tarkanian testified that his father's health had been declining since 2009 but his
16 father had not had another major problem until his heart attack and hospitalization in March
17 2012. He testified that he had concerns about his father's condition after that hospitalization,
18 including Jerry Tarkanian's inability to walk, his risk of falling, his inability to go to the
19 restroom without assistance, and his limited speech. Daniel Tarkanian testified that he would
20 assist his mother in lifting his father at times when he fell out of his chair or bed. He testified
21 that he spent a lot of time with his father and also brought his children along to interact with their
22 grandfather.

23 Daniel Tarkanian testified that after his father's March 2012 heart attack, he decided it
24 was important to remain in the Residence by paying down the mortgage and refinancing it at a
25 low interest rate. He testified that during 2012 he believed the fair market value of the
26 Residence was somewhere in the mid-\$300s based on a county tax assessment. He testified that
27 prior to the principal reductions in 2012, he and his wife had no equity in the Residence and that
28 it was upside down several hundred thousand dollars. Daniel Tarkanian testified that the actual

1 reduction in principal was \$398,701.92, resulting in \$93,596 in equity based on the county
 2 assessor's valuation of the Residence. He testified that the principal payment of \$398,701.92
 3 resulting in \$93,596 of equity was a lousy investment but it was more important to remain in the
 4 Residence after his father's heart attack. He testified that he tried to refinance the Residence at
 5 the end of 2012, but had to wait until after he filed his 2012 tax return. Daniel Tarkanian
 6 testified that when he tried to refinance in 2013 at Bank of the West, he could not do so because
 7 of the FDIC judgment.

8 Daniel Tarkanian testified that a little over a month ago, Jerry Tarkanian suffered another
 9 heart attack. He was able to rush over from the Residence to his father's house and was the first
 10 adult to arrive. Jerry Tarkanian was taken to the hospital and was diagnosed with another heart
 11 attack. Daniel Tarkanian testified that his sister had arrived before him and placed a CPAP mask
 12 on Jerry Tarkanian to force air into his lungs.

13 DISCUSSION

14 Under Section 541(a)(1), all property in which a debtor has a legal or equitable interest as
 15 of the commencement of the bankruptcy case constitutes property of their bankruptcy estate.
 16 Under Section 522(b)(1), an individual Chapter 7 debtor may exempt from property of the
 17 bankruptcy estate property that may be claimed as exempt under applicable state law pursuant to
 18 Section 522(b)(3). Under Section 522(b)(3)(A), property claimed as exempt under state law is
 19 subject to the provisions of Section 522(o). Under Section 522(o)(4), "~~the value of an interest~~
 20 ~~in~~" real property that a debtor claims as a homestead "~~shall be reduced~~ to the extent that ~~such~~
 21 ~~value is attributable~~ to any portion of any property that the debtor disposed of in the 10-year
 22 period ending on the date of the filing of the petition with ~~the intent to hinder, delay, or defraud a~~
 23 ~~creditor~~ and that the debtor ~~could not exempt~~, or that portion that the debtor could not exempt,
 24 under subsection (b), if on such date the debtor had held the property so disposed of."
 25 (Emphasis added.)

26 Under Section 522(b)(2), each State may elect not to allow its residents to claim the
 27 federal bankruptcy exemptions set forth in Section 522(d). Under NRS 21.090(3), Nevada has
 28 "opted out" of the federal bankruptcy exemptions. See Leavitt v. Alexander (In re Alexander).

1 472 B.R. 815, 821 (B.A.P. 9th Cir. 2012).

2 Subject to specific exceptions, the Nevada Constitution exempts from a forced sale the
3 homestead that is available to Nevada residents. See Nev. Const. art. 4, § 30. NRS 21.090(1)(l)
4 permits Nevada residents to claim the "homestead as provided for by law . . ." NRS
5 115.005(2)(a) defines a homestead to mean property consisting of "a quantity of land, together
6 with the dwelling house thereon and its appurtenances." Under NRS 115.020, a homestead is
7 claimed by recording a declaration of homestead at any time before an execution sale of the
8 property. See Myers v. Matley, 318 U.S. 622, 627 (1943). Under NRS 115.010(2), a homestead
9 claimed as exempt from execution "extends only to that amount of equity in the property held by
10 the claimant which does not exceed \$550,000 in value . . ." ¹³

11 The homestead provided for by Nevada law is limited by the Nevada Supreme Court's
12 decision in Maki v. Chong, 119 Nev. 390, 75 P.3d 376 (Nev. 2003). In Maki, the court rejected
13 a homestead claim by a judgment debtor who had converted the creditor's funds to acquire a
14 residence. In pertinent part, the court observed as follows:

15 There is a time-honored principal that states that he who keeps
16 property that he knows belongs to another must restore that
17 property. This idea, manifested in the doctrine of equitable liens,
18 permeates our entire system of justice regarding equity. "[O]ne
19 who has purchased real property with funds of another, under
20 circumstances which ordinarily would entitle such other person to
21 enforce a constructive trust in, or equitable lien against, the
22 property, cannot defeat the right to enforce such trust or lien on the
23 grounds that [the homestead exemption applies]."

24 Under equitable lien principals, the homestead exemption is
25 inapplicable when the proceeds used to purchase real property can
26 be traced directly to funds obtained through fraud or similar
27 tortious conduct.

28 119 Nev. at 393, 75 P.3d at 378-79 (citations and footnotes omitted).

There is no dispute that the Residence is property of the Debtors' bankruptcy estate and
that the Debtors have claimed a homestead exemption under NRS 21.090(1)(l) and NRS

¹³ As of 1995, the maximum amount of the Nevada homestead exemption was \$125,000. Effective July 1, 2003, the amount was increased to \$200,000. Effective July 1, 2005, the amount was increased to \$350,000. Effective July 1, 2007, the amount was increased to the current maximum of \$550,000.

1 115.050. There also is no dispute that the Homestead Objection was timely filed by the FDIC
2 under FRBP 4003(b)(1).

3 Although the FDIC initially asserted only that the Debtors had made fraudulent transfers
4 for which their Nevada homestead exemption would be denied under Maki, see Homestead
5 Objection at 8:2-27, it also argues that the Debtors' claim of exemption is limited by Section
6 522(o). See Reply at 4:3 to 6:21; FDIC Brief at 6:16 to 9:7. Debtors' opposition to the
7 Homestead Objection actually raised Section 522(o) in the first instance, see Debtors' Response
8 at 7:11 to 13:22, and they of course maintain that Section 522(o) does not apply. See Daniel
9 Brief at 7:18 to 15:18; Amy Brief at 3:9 to 8:2. Because the limitations under Section 522(o)
10 apply only if an exemption is available to begin with, the court will initially examine whether the
11 Debtors may even claim a Nevada homestead under Maki.

12 I. Availability of the Nevada Homestead Exemption.

13 In Maki, the Nevada Supreme Court acknowledged the fundamental purpose of
14 the homestead exemption is to preserve "the family home despite financial distress, insolvency
15 or calamitous circumstances . . ." 75 P.3d at 378 & n.2, citing Jackman v. Nance, 109 Nev. 716,
16 718, 857 P.2d 7, 8 (Nev. 1993). The protection provided by the homestead exemption, however,
17 is not absolute. In addition to express statutory exceptions to a judgment creditor's execution
18 against a homestead, e.g., tax liens, mortgages, deeds of trust, and homeowners association liens,
19 the Nevada Supreme Court acknowledged its prior recognition of an additional exception for
20 payment of child support obligations. 75 P.3d at 378-79 & nn.5 & 6, citing, e.g., Breedlove v.
21 Breedlove, 100 Nev. 606, 608, 691 P.2d 426, 427 (Nev. 1984). With respect to parents who
22 owed child support arrearages, the court concluded that they are "not the type of debtor whom
23 the legislature sought to protect." 75 P.3d at 379.

24 The type of debtor before the court in Maki was the sister of a Nevada prison inmate.
25 While her brother was in prison, she misappropriated his state insurance disability settlement
26 funds and his monthly disability benefit checks. She used the monies to purchase a residence
27 and then claimed a Nevada homestead exemption after her brother obtained a fraud judgment
28

1 against her.¹⁴ In rejecting her homestead claim, the Nevada Supreme Court observed:

2 "The homestead exemption statute cannot be used as an instrument
3 of fraud and imposition." Public policy supports our application
4 of an exception to homestead exemptions for victims of fraud
5 or similar tortious conduct. An individual using fraudulently
6 obtained funds to purchase real property should not be protected
7 by the homestead exemption because the exemption's purpose is to
8 provide protection to individuals who file the homestead
9 exemption in good faith.

10 75 P.3d at 379 (footnotes omitted) (Emphasis added). Because the sister had obtained her
11 brother's funds by fraudulent means, the court concluded that her homestead exemption was
12 invalid and could not prevent an execution sale of the residence to enforce the judgment. *Id.* at
13 379-80.

14 The Maki court relied primarily on a decision by the Washington Supreme Court in
15 Webster v. Rodrick, 394 P.2d 689 (Wash. 1964). Webster involved a homestead claim by a
16 married couple where the wife had embezzled funds from her employer, and the funds may have
17 been used to purchase and improve the couple's residence. The employer obtained a judgment
18 against the wife and the marital community based on misappropriation. The embezzled funds
19 had been sufficiently traced to the residence to support the inclusion of an equitable lien against
20 the debtors' residence. The Washington Supreme Court rejected the debtors' claim of a
21 homestead exemption, concluding that the Washington "homestead exemption statute cannot be
22 used as an instrument of fraud and imposition." 394 P.2d at 692 (citations omitted).¹⁵

23 ¹⁴ At the time Maki was decided, the maximum amount of the Nevada homestead
24 exemption under then-NRS 115.010(2) was \$125,000 of equity in the judgment debtor's
25 residence. 75 P.2d at 378.

26 ¹⁵ All of the other decisions cited by the Nevada Supreme Court in Maki, 119 Nev. at 393
27 & n.9, 75 P.3d at 379 & n.9, involved constructive trusts or equitable liens imposed on parties
28 that had acquired or improved their homestead properties through funds which had been
obtained through fraud, embezzlement or unjust enrichment. See, e.g., Mack v. Marvin, 211
Ark. 715, 202 S.W.2d 590, 594 (1947) [constructive trust imposing a lien applied where
defendants defrauded plaintiff out of funds and spent on residence claimed as a homestead];
Duhart v. O'Rourke, 99 Cal.App.2d 277, 221 P.2d 767, 769 (1950) [sale of homestead to execute
a judgment proper where funds fraudulently obtained were traced to residence]; Jones v.
Carpenter, 90 Fla. 407, 106 So. 127, 130 (1925) [equitable lien imposed on homestead equal to
value of funds misappropriated from an insolvent corporation]; In re Munsell's Guardianship,
239 Iowa 307, 31 N.W.2d 360, 367 (Iowa 1948) [former guardian's homestead may be subject to

1 In both Maki and Webster, it is clear that the funds at issue originally belonged to the
 2 judgment creditor. In Maki, disability checks payable to the judgment creditor were
 3 misappropriated and used to acquire the debtor's residence. In Webster, funds embezzled from
 4 the judgment creditor were used to acquire and improve the debtor's residence. In each case,
 5 there was tortious conduct by which the debtor acquired the funds belonging to the judgment
 6 creditor that were traceable to the residence for which a homestead exemption was claimed. In
 7 each circumstance, the facts supported the imposition of an equitable lien or the recognition of a
 8 constructive trust in favor of the judgment creditor notwithstanding the debtor's attempt to claim
 9 a homestead.

10 In Henry v. Rizzolo, 2012 WL 4092604 (D. Nev. 2012), a Nevada debtor faced with
 11 execution of a judgment asserted an exemption in certain annuity contracts pursuant to NRS
 12 687B.290.1. That statute included a specific exception with respect to "amounts paid for or as
 13 premium on any such annuity with intent to defraud creditors . . ." The federal court
 14 interpreting Nevada law concluded that the exception to the annuity contracts exemption
 15 required proof of intent to defraud creditors. 2012 WL at *5. A judgment under NRS
 16 112.180(1)(a) already had been entered in favor of the executing creditors, however, determining
 17 that the same debtor had received a fraudulent transfer of funds owned by her stepson. Applying
 18 the statutory exception and "the equitable lien principals set forth in Maki . . .," 2012 WL at *8,
 19 the court rejected the claimed exemption of the annuity contracts as there was a sufficient basis

20
 21
 22 constructive trust for mortgage payment made from funds improperly paid from guardianship
 23 estate]; Long v. Earle, 277 Mich. 505, 269 N.W. 577, 582 (1936) [constructive trust imposed on
 24 homestead acquired with funds embezzled by a trustee]; American Ry. Express Co. v. Houle,
 25 169 Minn. 209, 210 N.W. 889, 890 (1926) [constructive trust imposed on homestead dwelling
 26 constructed using funds embezzled from husband's employer; wife's assertion of innocent
 27 spouse for value defense rejected]; Wells Fargo Bank Intern. v. Binabdulaziz, 124 Misc.2d 1072,
 28 478 N.Y.S.2d 580, 582 (Sup.Ct.1984) [homestead exemption denied to defendants who used
 portion of funds misdeposited into their bank account to acquire residence]; Curtis Sharp Custom
 Homes, Inc. v. Glover, 701 S.W.2d 24, 25-26 (Tex.App.1985) [foreclosure on equitable lien
 against homestead for portion of funds embezzled from plaintiff employer denied due to
 constitutional protection in Texas for homestead]; Warsco v. Oshkosh Savings & Trust Co., 190
 Wis. 87, 208 N.W. 886, 887 (1926) [trust funds improperly distributed to a beneficiary and used
 to invest in a homestead may be impressed with a lien].

1 to conclude that the contracts had been purchased in whole or in part with funds owned and
 2 fraudulently transferred by the judgment debtor's stepson. Thus, as was the case in Maki and
 3 Webster, in Henry there was no question that the funds used to acquire the claimed exemption
 4 did not belong to the judgment debtor.¹⁶

5 But neither Maki, Webster nor Henry address whether a judgment debtor outside of
 6 bankruptcy may engage in exemption planning in contemplation of a judgment being entered.
 7 Most states have adopted statutes providing remedies for judgment debtors who fraudulently
 8 transfer their assets to thwart the collection efforts of judgment creditors. See, e.g.
 9 Nev.Rev.Stat. 112.140 to 112.250 (Uniform Fraudulent Transfer Act). Even for individuals who
 10 petition for bankruptcy protection, prebankruptcy exemption planning is permitted. See In re
 11 Stern, 345 F.3d 1036, 1043 (9th Cir. 2003). In Nevada, it is well established that a judgment
 12 debtor can record a homestead declaration at any time before the execution sale is completed.
 13 See Herndon v. Grilz, 112 Nev. 873, 878, 920 P.2d 998, 1001 (Nev. 1996). Thus, Nevada law
 14 contemplates that a judgment debtor can convert his or her otherwise non-exempt residence into
 15 a fully exempt homestead even on the day of the execution sale.

16 In the present case, neither the FDIC nor the Debtors have cited an instance where the
 17 equitable lien concepts articulated in Maki and Webster have been applied to bar debtors from
 18 using their own assets for exemption planning. In particular, the parties have cited no instance
 19 where a judgment debtor has been barred under Nevada law from using his or her own assets to
 20 acquire or increase the equity in a residence for purposes of the homestead exemption. As
 21 previously noted, individual debtors are allowed to engage in exemption planning prior to
 22

23 ¹⁶ Other than the unreported decision in Henry, Westlaw and Lexis list two reported
 24 cases that have cited Maki. In Coppler & Mannick, P.C. v. Wakeland, 138 N.M. 108, 117 P.3d
 25 914 (N.M. 2005), the judgment creditors judicially foreclosed on the debtor's residence. In light
 26 of the foreclosure, the debtor trashed the residence. In a separate action, the same creditors
 27 obtained a judgment against the debtor for damages based on waste of the property. In light of
 28 the debtor's egregious conduct, the New Mexico Supreme Court imposed an equitable lien
 against the debtor's New Mexico homestead to secure payment of the damages that the debtor
 had inflicted upon the creditors' property. In Rusheen v. Cohen, 37 Cal.4th 1048, 1064, 128
 P.3d 713, 724 (Cal. 2006), the California Supreme Court cited Maki only as an example of a
 State providing exemptions as an alternative remedy to asserting a claim for abuse of process.

1 bankruptcy, subject to judicially created limitations applicable in bankruptcy. In a bankruptcy
 2 context, such limitations serve a fundamental bankruptcy purpose of ensuring a ratable
 3 distribution to creditors. Outside of bankruptcy, however, individual states must determine the
 4 degree of exemption planning permitted by their residents.¹⁷ The Nevada Supreme Court's
 5 decision in Maki, like Webster, expressed the court's concern for debtors who fraudulently or
 6 tortiously obtain property from others and invoke the homestead exemption as a shield to protect
 7 their ill-gotten gains. Because Nevada permits its residents to claim the homestead exemption at
 8 any time before completion of an execution sale, the concerns expressed by the court in Maki do
 9 not appear to be applicable here.

10 In the instant case, there is no dispute that the Debtors purchased the Residence in June,
 11 2005 for \$810,000 using a down payment of \$162,000 from the sale of their prior residence.
 12 There is no dispute that after the Debtors acquired the Residence in 2005, they owed a balance of
 13 \$648,000. There is no dispute that after 2005, Debtors made only interest payments on their
 14 mortgage. There is no dispute that the Debtors could have filed a homestead declaration at any
 15 time after they purchased the Residence in 2005. There is no dispute that the maximum amount
 16 of the Nevada homestead exemption was \$200,000 at the time the Debtors purchased the
 17 Residence. There is no dispute that the maximum amount of the Nevada homestead exemption
 18 was \$350,000 between July 1, 2005 and June 30, 2007. There is no dispute that the maximum
 19 amount of the Nevada homestead exemption after July 1, 2007, is \$550,000.

20 There is no dispute that as of July 1, 2012, the Debtors had no equity in the Residence.
 21 There is no dispute that the Debtors made no principal payments on their mortgage until July 12,
 22 2012. There is no dispute that the Debtors made additional principal payments on August 3,
 23

24 ¹⁷ Compare Havoco of America, Ltd. v. Hill, 790 So.2d 1018 (Fla. 2001)(under Florida
 25 constitution, an individual's residence acquired by conversion of nonexempt assets with specific
 26 intent to hinder, delay or defraud creditors remains protected by the homestead exemption).
 27 Compare also Society of Lloyd's v. Collins, 284 F.3d 727 (7th Cir. 2002)(life insurance policies
 28 exempt under Illinois law were not subject to garnishment under Illinois statute requiring proof
 that policies were purchased with intent to convert nonexempt property or to defraud creditors);
Dona Sav. and Loan Ass'n, F.A. v. Dofflemeyer, 115 N.M. 590, 855 P.2d 1054 (N.M. 1993)
 (conversion of certificate of deposit and real estate to annuity exempt under New Mexico law
 was not fraudulent per se).

1 2012 and August 22, 2012. There is no dispute that the principal payments made by the Debtors
 2 in July 2012 and August 2012 reduced their mortgage balance to approximately \$248,000.
 3 There is no dispute that the reduction in the mortgage balance resulted in the Debtors having
 4 equity in their Residence. There is no dispute that the amount of the Debtors' equity in the
 5 Residence is less than the \$550,000 maximum allowed for a Nevada homestead. There is no
 6 dispute that the Debtors did not record their homestead declaration until February 6, 2013.

7 Although other facts are established by the evidence and will be discussed below, the
 8 salient fact is that the assets which enabled the Debtors to claim a homestead exemption in the
 9 Residence were the Debtors' assets, not those of a third party. Under these circumstances, the
 10 court concludes that the decision in Maki does not prohibit the Debtors from claiming a
 11 homestead in their Residence under Nevada law. As to that basis, the Homestead Objection will
 12 be overruled. The remaining inquiry is whether Section 522(o) limits the amount of the Debtors'
 13 homestead claim.

14 II. Applicability of Section 522(o).

15 In 2005, i.e., the year the Debtors purchased the Residence, Section 522(o) was
 16 enacted, along with Section 522(p) and Section 522(q), to limit an individual's ability to claim a
 17 homestead in bankruptcy. Section 522(p) attempts to close the so-called "mansion loophole" by
 18 capping the amount of a homestead exemption to now \$155,675¹⁸ for any residence acquired by
 19 the debtor within 1215 days before commencing bankruptcy. See In re Greene, 583 F.3d 614,
 20 619 (9th Cir. 2009). This prevents well-heeled individuals from relocating to States that have
 21 more generous homesteads, e.g., Florida and Texas,¹⁹ shortly before filing for bankruptcy
 22

23 ¹⁸ When Section 522(p) was enacted effective April 20, 2005, the cap was \$125,000. As
 24 a result of adjustments every three years, the cap was raised to \$155,675 effective April 1, 2013.

25 ¹⁹ Florida permits its residents to homestead 160 acres of contiguous land located outside
 26 of a municipality, or, one-half of an acre of contiguous land located within a municipality,
 27 without a dollar value limitation. See Fla. Const. art. X, § 4; Fla. Stat. Ann. §§ 222.01, 222.02 &
 28 222.05. Texas permits its residents to homestead up to 100 acres of rural property for a single
 adult, up to 200 acres of rural property for a family, or up to ten acres of urban property for a
 residential and/or business homestead, with no dollar value limitation. See Tex. Const. art. XVI,
§§ 50, 51; Tex. Prop. Code §§ 41.001 to 41.002.

1 protection. See In re Kane, 336 B.R. 477, 482 (Bankr.D.Nev. 2006). Section 522(q) further
 2 limits the exemption permitted by Section 522(p) for a debtor who is convicted of certain
 3 felonies or if the debtor has a debt arising from certain types of wrongful conduct, e.g., securities
 4 fraud, serious physical injury or death, and the like. For individuals who do not relocate to
 5 another state, Section 522(o) attempts to prevent individuals from increasing the value of their
 6 homestead by disposing of non-exempt assets "with the intent to hinder, delay, or defraud a
 7 creditor . . ."

8 In this district, a party objecting to a homestead exemption under Section 522(o) must
 9 demonstrate: "(a) an increase in the value of the debtor's homestead; (b) that the increase was
 10 'attributable' to the disposition of nonexempt assets; (c) that the disposition of the nonexempt
 11 assets was made with the intent to hinder, delay, or defraud a creditor; and (d) that the
 12 disposition occurred during the ten-year period ending on the date the debtor's bankruptcy
 13 petition was filed." In re Stanton, 457 B.R. 80, 91 (Bankr.D.Nev. 2011). See also In re Halinga,
 14 2013 WL 6199152 at *4 (Bankr.D.Idaho Nov. 27, 2013).²⁰

15 In the instant case, the parties do not dispute that any increase in the value of the
 16 Debtors' homestead is entirely attributable to the payments made on July 12, 2012, August 3,
 17 2012, and August 22, 2012, because the Debtors had no equity whatsoever in the Residence prior
 18 to those principal payments. Additionally, there is no dispute that any challenged disposition of
 19 assets in this case occurred within ten years prior to the filing of the Debtors' bankruptcy

20
 21 ²⁰ Section 522(o) refers to property that the debtor "disposed of." It does not use the
 22 word "transferred." The term "transfer" is defined in Section 101(54) broadly and subsection
 23 (D) includes "each mode...of disposing of or parting with - (i) property; or (ii) an interest in
 24 property." The term transfer is used in many sections of the Bankruptcy Code, including the
 25 provisions governing the recovery of avoidable transfers under Sections 544, 547, 548, 549, 550
 26 and 551, as well as the provision denying an individual debtor's discharge under Section
 27 727(a)(2). For purposes of the latter, the term "transfer" includes withdrawing money from a
 28 bank account as an exchange of debt for money. See In re Bernard, 96 F.3d 1279, 1283 (9th Cir.
 1996). When a debtor parts with claims against a bank to hinder the collection efforts of a
 creditor, a transfer has occurred and the discharge may be denied under Section 727(a)(2)(A)
 regardless of whether the funds are deposited into a separate account of the debtor. See, e.g.,
A&H Insurance, Inc. v. Huff, 2014 WL 904537 (B.A.P. 9th Cir. March 10, 2014) (reversing
 bankruptcy court conclusion that transfer had not occurred based on Bernard, but affirming
 dismissal of creditor complaint).

petition.²¹ What remains in dispute are: (1) whether the Debtors' resulting homestead exemption was attributable to a disposition of nonexempt assets, and (2) whether that disposition of assets was made with intent to hinder, delay or defraud creditors.

A. Disposition of Non-Exempt Assets.

The evidence adduced at trial established that the source of the funds for the July 12, 2012, payment to Bank of America was: (1) \$220,000 from the life insurance policies of the parents' irrevocable trust that were loaned to JAMD which then partially repaid prior loans made to JAMD by the Debtors; (2) \$30,000 from JAMD's available operational income which then partially repaid prior loans made to JAMD by the Debtors; and (3) \$50,000 from the Daniel Tarkanian congressional campaign to repay a loan previously made by the Debtors to the campaign. The source of funds for the August 3, 2012, payment to Bank of America was from a \$50,000 loan made by the Tarkanian Basketball Academy to JAMD which then partially repaid the prior loans to JAMD made by the Debtors. The source of funds for the August 22, 2012, payment to Bank of America was from JAMD's partial repayment of prior loans to JAMD made by the Debtors. Thus, according to Debtors' evidence, the direct source of all of the funds that the Debtors used to make the principal payments on their mortgage were repayments of loans by JAMD (\$350,000) or the repayment of a loan by the Daniel Tarkanian congressional campaign (\$50,000).

Debtors jointly argued that they did not dispose of non-exempt assets as required by Section 522(o). See Debtors' Response at 12:11-12. As to the July 12, 2012 payment, Debtors also argued that \$220,000 of the \$300,000 principal reduction originated from the life insurance policies held by the parents' irrevocable trust. Debtors then argue that the life insurance policies

²¹ Section 522(o) addresses a Chapter 7 debtor's act of disposing of non-exempt assets within ten years before the commencement of the case with intent to hinder, delay, or defraud a creditor. Because the "disposing of" assets constitutes a "transfer" within the meaning of Section 101(54)(D), see discussion at note 20, supra, the same conduct implicating a homestead limitation under Section 522(o) may not result in a denial of discharge under Section 727(a)(2). The latter exception to discharge is based on impermissible transfers of assets that occur only within one year before or any time after the commencement of the case. In the instant proceeding, Debtors' last principal reduction occurred on August 22, 2012, more than 16 months before the commencement of the case.

are exempt under NRS 21.090(1)(k). See Debtors' Response at 12:14-18; Daniel Brief at 15:9-12. Debtors do not claim that the \$30,000 in operational income of JAMD or the \$50,000 in funds from the Daniel Tarkanian campaign fund are exempt. As to the August 3, 2012 payment, Debtors do not identify an exemption that would encompass the \$50,000 loaned by the Tarkanian Basketball Academy to JAMD. As to the August 22, 2012 payment, Debtors do not identify an exemption that would encompass the \$50,000 apparently made from the operational income of JAMD.

Debtors' reliance on the insurance exemption under NRS 21.090(1)(k) is misplaced. There is no dispute that the life insurance policies issued by Phoenix Life Insurance Company are held by the parents' irrevocable trust rather than the Debtors.²² The Debtors jointly as well as separately, have cited no authority explaining how NRS 21.090(1)(k) could be applied to allow them to exempt an interest in life insurance policies in which they have neither an ownership nor a beneficial interest.²³ The few cases applying NRS 21.090(1)(k) involved voluntary Chapter 7 proceedings where the debtors had purchased or received life insurance policies and scheduled their interest in the policies in their bankruptcy schedules. See In re Bower, 234 B.R. 109 (Bankr.D.Nev. 1999); In re Dawson, 2004 Bankr. LEXIS 2039 (Bankr. D. Nev. 2004).

In her own response to the Homestead Objection, Amy does not rely on NRS 21.090(1)(k), but separately argues that Section 522(o) somehow is meant to address the

²² Indeed, any ownership or beneficial interest in the parents' life insurance policies that the Debtors' held on the petition date would have been listed at Items 9 or 20 of their personal property Schedule "B," but it was not. Likewise, if the Debtors' held such an interest in July 2012 and later transferred that interest before filing their bankruptcy petition, the transfer would have to be disclosed in Item 10 of their SOFA, but it was not. (ECF Nos. 12 and 170). Additionally, the separate Personal Financial Statements of Daniel Tarkanian and Amy Tarkanian, as well as the separate Affidavits of Financial Condition of Daniel Tarkanian and Amy Tarkanian, all dated December 22, 2011 (Exs. "14," "17," "16" and "18"), did not list or disclose an ownership interest in the policies insuring the lives of the parents.

²³ A copy of the parents' irrevocable trust was not introduced into evidence. Because the Debtors have never disclosed or claimed that they are the named beneficiaries of the parents' life insurance policies, the court assumes that the irrevocable trust is the named beneficiary of the insurance policies and that the parents are the named beneficiaries of the trust.

1 disposition of the debtor's residence rather than the disposition of separate non-exempt property.

2 In her written argument, Amy relies on the following language from a leading bankruptcy
3 treatise:

4 There are two different time periods that apply to the limitation in
5 section 522(o). The first time frame deals with the debtor's intent
6 to hinder, delay or defraud a creditor, and it is measured at the time
7 of disposition of the nonexempt property. Section 522(o) requires
8 that the disposition must occur within the 10-year period ending on
9 the filing date of the petition.

10 The second time frame concerns the question of whether the debtor
11 could exempt the converted assets. Although the time of
12 disposition would seem to be the logical choice for determining the
13 converted assets' nonexempt status, given the potential relevancy
14 of this status to the debtor's fraudulent intent, the statute uses a
15 different time frame. The language of section 522(o) requires the
16 court to look at whether the converted property could be exempted
17 "if on such date the debtor had held the property so disposed of."
18 Since the phrase "on such date" must refer to the only other date
19 specified in section 522(o), which is the date of the filing of the
20 petition, it is the petition date that controls in determining whether
21 the converted property could be exempted. Therefore, if the
22 property converted within the 10-year period could be exempted
23 under any applicable provision of section 522(b) at the time the
24 petition is filed, the debtor's exemptible interest in the homestead
25 should not be reduced under this provision.

26 See Amy Brief at 6:15-21, citing 4 COLLIER ON BANKRUPTCY ¶ 522.08[5] (Alan N. Resnick and
27 Henry J. Sommer, eds., 16th ed. 2014) (Emphasis added). Based on this language, Amy argues
28 that the "applicable exemption in question is undeniably the homestead exemption under Nevada
law, not whether 'loan repayments' are exempt as the FDIC-R attempts to recharacterize." Amy
Brief at 6:21-23. This argument is circular, however, inasmuch as the purpose of the statute is to
prevent a debtor from disposing of nonexempt assets to increase the value of the homestead
exemption. Contrary to Amy's position, the statute focuses on whether the assets disposed of by
the debtor, i.e., the "converted assets," could have been claimed as exempt on the petition date if
the debtor actually held the converted assets on the petition date. Thus, just as the Debtors
jointly have misplaced their reliance on NRS 21.090(1)(k) with respect to the \$220,000
originally loaned by the parents' irrevocable trust to JAMD, Amy's separate focus on any
dispositions of the homestead rather than other nonexempt assets is equally misguided.

 But the Debtors also jointly argued that the repayment of \$350,000 of loans by JAMD to

1 Debtors is excluded by Section 522(o) because the FDIC could have enforced its judgment only
2 by seeking a charging order against the Debtors' interest in JAMD pursuant to NRS 86.401. See
3 Debtors' Response at 12:20-22.²⁴ This is a non-sequitur because Section 522(o) focuses on the
4 non-exempt asset that was disposed of rather than the mechanism by which the judgment
5 creditor attempts to reach an asset. According to their personal property Schedule "B," the
6 Debtors have a 6.3 percent ownership interest in JAMD.²⁵ According to the Debtors, Daniel
7 Tarkanian and perhaps Amy Tarkanian had a membership interest in JAMD and Daniel
8 Tarkanian separately loaned monies to JAMD. According to his Personal Financial Statement
9 dated December 22, 2011 (Ex. "14"), JAMD owed Daniel Tarkanian \$670,379. According to
10 Item 16 of the Debtors' personal property Schedule "B" filed on January 3, 2014, there were no
11 accounts receivable owed to the Debtors, not even by JAMD, as of the date the Debtors filed
12 their bankruptcy petition, i.e., December 19, 2013.²⁶

13 There is no apparent dispute that JAMD is a limited liability company under Nevada law.
14 There also is no apparent dispute that at least Daniel Tarkanian is a member of JAMD. There
15 also is no dispute that the FDIC has a judgment against both Daniel Tarkanian and Amy
16 Tarkanian. Under NRS 86.401(1), a judgment creditor of a member of a limited liability

18
19 ²⁴ As previously noted, Daniel Tarkanian testified that because JAMD and the Tarkanian
20 Basketball Academy are not judgment debtors, the FDIC could pursue JAMD only for the
21 moneys that JAMD owes to Daniel Tarkanian.

22 ²⁵ Even though the Debtors indicate the same percentage ownership interest in JAMD in
23 their schedules as community property, the ownership interest in JAMD is reflected in the
24 Affidavit of Financial Condition of Daniel Tarkanian dated December 22, 2011 (Ex. "16"), but
25 not in the Affidavit of Financial Condition of Amy Tarkanian of the same date. (Ex. "18").
26 Similarly, the Personal Financial Statement for Daniel Tarkanian (Ex. "14") listed an accounts
27 receivable owed by JAMD in the amount of \$670,379, but no similar accounts receivable was
28 listed in the Personal Financial Statement of Amy Tarkanian (Ex. "17").

²⁶ Daniel Tarkanian testified that the \$670,379 receivable from JAMD listed in the
December 22, 2011, Personal Financial Statement would have been reduced by the \$350,000 in
loan repayments that were made by JAMD in July and August 2012. Assuming that the Debtors
had made no additional loans to JAMD between the date of the Personal Financial Statement and
the repayments by JAMD in 2012, the balance owed by JAMD to the Debtors would have been
approximately \$320,379.

1 company may apply to a court for an order to "charge the member's interest with payment of the
2 unsatisfied amount of the judgment with interest." The statute further provides that "To the
3 extent so charged, the judgment creditor has only the rights of an assignee of the member's
4 interest."

5 A party may, of course, be both a member of a limited liability company and a creditor of
6 a limited liability company. No evidence has been provided as to whether JAMD is a member
7 managed or a manager managed limited liability company. Members of a limited liability
8 company may have both economic and non-economic interests, see Nev.Rev.Stat. 86.293, and
9 the capital contributions of members may take the form of cash, property, services rendered,
10 promissory notes, or another binding obligation to contribute cash. See Nev.Rev.Stat. 86.321.
11 The management of a limited liability company generally is vested in its members in proportion
12 to their capital contributions. See Nev.Rev.Stat. 86.291(1).

13 Under NRS 86.401(1), a judgment creditor may obtain a charging order allowing access
14 to the member's economic interest in the share of the profits and distributions of the limited
15 liability company. See Weddell v. H2O, Inc., 271 P.3d 743, 750 (Nev. 2012). If the member
16 files a Chapter 7 petition, both the member's economic and non-economic interests become
17 property of the bankruptcy estate, and the bankruptcy trustee may exercise the management
18 rights, if any, that the debtor has in the limited liability company. See In re B&M Land and
19 Livestock, LLC, 498 B.R. 262, 268 (Bankr.D.Nev. 2013) (prior Chapter 7 filing by sole member
20 of limited liability company precluded subsequent filing of Chapter 11 by limited liability
21 company without participation or consent of Chapter 7 trustee).

22 In the instant case, the Trustee has control over whatever management rights, if any, that
23 Daniel Tarkanian has in JAMD in proportion to Daniel Tarkanian's capital contribution unless
24 otherwise provided in the articles of organization or operating agreement for JAMD.²⁷ As to any
25

26 ²⁷ A copy of the articles of organization or a copy of the operating agreement for JAMD
27 was not admitted into evidence. Those documents would specify whether JAMD is member-
28 managed or manager-managed. It appears that Daniel Tarkanian is the manager. As previously
discussed at 2-3, Debtors originally claimed an exemption of their interest in JAMD but
amended their schedules to eliminate that exemption claim after the Trustee objected. (ECF

monies that Daniel Tarkanian previously loaned to JAMD, he no longer owned those funds and he was paid back from other funds received by JAMD, e.g., loans from his parents' irrevocable trust. What Daniel Tarkanian owned in July and August 2012 were claims against JAMD for the monies he had loaned. Compare In re Bernard, 96 F.3d at 1283²⁸. Those claims are separate from Daniel Tarkanian's economic interests (profits, losses and distributions) as well as his non-economic interests (management rights) in JAMD.²⁹

Likewise, when Daniel Tarkanian loaned monies to his congressional campaign, he no longer owned the funds, but instead held claims against his campaign fund.

In this case, the Debtors' factual and legal position is that JAMD and the Daniel Tarkanian congressional campaign repaid claims that were owed to Daniel Tarkanian. Debtors do not dispute that the decision by JAMD and the congressional campaign to repay those claims were made on behalf of JAMD and the campaign by Daniel Tarkanian. Those claims against JAMD and the congressional campaign were converted to money which the Debtors used to make their principal payments to Bank of America. As any mode of disposing of or parting with property is considered to be a transfer under Section 101(54)(D), certainly the Debtors'

Nos. 12, 38, 79, 80).

²⁸ In Bernard, the debtors had deposited funds into a bank account and then withdrew the funds when faced with a potential prejudgment attachment by a creditor. 96 F.3d at 1281. Under California law, the relationship between a bank and a depositor is a debtor creditor relationship. As a result, the debtors did not own the monies they had deposited, but instead had a claim to the funds. In Huff, the appellate panel observed that under Nevada law, the relationship between a bank and a depositor also is a debtor creditor relationship that gives rise to a claim between the parties. 2014 WL at *6. In the present case, the Debtors have characterized the July and August 2012 payments to Daniel Tarkanian not as the return of capital contributions, but as the repayment of loans. The debtor-creditor relationship that the Debtors had with both JAMD and the Daniel Tarkanian congressional campaign therefore resulted in claims that the Debtors had against both entities.

²⁹ Items 16, 18, 21 and 35 of the Debtors' personal property Schedule "B" directed them to list any accounts receivable, liquidated debts owed to them, contingent and unliquidated claims of every nature, and other personal property of any kind not already listed. Those items do not list any amounts owed by JAMD to either of the Debtors. If Daniel Tarkanian had any claims against JAMD for unpaid loans or receivables as of the petition date, those claims against JAMD would have been property of the bankruptcy estate pursuant to Section 541(a)(1). See Sierra Switchboard Co. v. Westinghouse Electric Corp., 789 F.2d 705, 707 (9th Cir. 1986).

1 conversion of their claims against JAMD and the congressional campaign constituted a disposing
2 of a debtor's assets under Section 522(o). Compare In re Bernard, 96 F.3d at 1283 ("Instead of
3 owning money sitting in their accounts, the Bernards owned claims against their bank. When
4 they withdrew from their accounts, they exchanged debt for money (which, more than
5 incidentally, was more difficult to the Sheaffers to acquire). Thus, when the Bernards made their
6 withdrawals they parted with property, satisfying the Code's definition of transfer.").

7 In this instance, neither the Debtors jointly, nor the Debtors separately, have pointed to
8 an exemption that would encompass their claims against JAMD or the Daniel Tarkanian
9 congressional campaign. The only exemption they cite, e.g., NRS 21.090(1)(k), simply does not
10 apply as the Debtors are not the owners or beneficiaries of the parents' life insurance policies.
11 Thus, the court concludes that the increase in the Debtors' homestead exemption, in fact, the
12 very existence of the homestead exemption, is attributable to the disposition of non-exempt
13 assets.

14 **B. Disposition With Intent to Hinder, Delay or Defraud.**

15 In determining whether a debtor disposed of nonexempt assets with intent to
16 hinder, with intent to delay, or with intent to defraud a creditor under Section 522(o), the
17 traditional "badges of fraud" employed in the fraudulent transfer context are often explored. See
18 Stanton, 457 B.R. at 92-93, citing, e.g., Addison v. Seaver (In re Addison), 540 F.3d 805 (8th
19 Cir. 2008), and In re Maronde, 332 B.R. 593 (Bankr.D.Minn. 2005). Only on rare occasions will
20 there be direct proof of the debtor's intent to hinder, delay or defraud, i.e., an admission. A
21 debtor may simply deny that he or she acted with intent to hinder, delay or defraud, or may
22 testify to another purpose for disposing of property. The trier of fact, of course, must assess the
23 credibility of such direct testimony. In evaluating such testimony, the trier of fact must take into
24 consideration all of the circumstantial evidence presented, such as the traditional badges of
25 fraud. See In re XYZ Options, Inc., 154 F.3d 1262, 1271 (11th Cir. 1998).

26 The nonexclusive list of badges indicating fraud include whether: (1) the transfer was to
27 an insider; (2) the debtor retained possession or control of the property transferred after the
28 transfer; (3) the transfer was disclosed or concealed; (4) the debtor was sued or threatened with

1 suit before the transfer; (5) the transfer was of substantially all of the debtor's assets; (6) the
 2 debtor absconded; (7) the debtor removed or concealed assets; (8) the consideration received was
 3 reasonably equivalent to the value of the asset transferred; (9) the debtor was insolvent or
 4 became insolvent shortly after the transfer; (10) the transfer occurred shortly before or shortly
 5 after a substantial debt was incurred; and (11) the debtor transferred the essential assets of a
 6 business to a lienor who then transferred the assets to an insider. See Stanton, 457 B.R. at 93,
 7 citing UNIF. FRAUDULENT TRANSFER ACT § 4(b) (1984). As one would expect, the opposing
 8 parties in the present dispute cite cases favorable to their position where the intent of various
 9 debtors was examined under the prism of badges of fraud.

10 For example, the FDIC relies primarily on the conclusions reached by a bankruptcy court
 11 in this district in Stanton, as well the fraudulent transfer conclusions reached by the same court
 12 in In re National Audit Defense Network, 367 B.R. 207 (Bankr.D.Nev. 2007). Additionally, the
 13 FDIC cites In re Thaw, 496 B.R. 842 (Bankr.E.D.Tex. 2013) and In re Maronde, where the
 14 courts referenced the badges of fraud in sustaining the trustees' homestead objections under
 15 Section 522(o). See FDIC Brief at 5:25 to 6:9 and 8:17 to 9:7; Reply at 4:5 to 6:21. Daniel
 16 Tarkanian maintains that the cases referenced by the FDIC are distinguishable and cites In re
 17 Chin, 492 B.R. 117 (Bankr.E.D.N.Y. 2013) as an example where the absence of badges of fraud
 18 constituted evidence of a lack of fraudulent intent in an action to avoid a fraudulent transfer
 19 under state law. See Daniel Brief at 13:15-17. Amy Tarkanian primarily relies on the In re
 20 Addison decision, as well as In re Arends, 506 B.R. 516 (Bankr.N.D. Iowa 2014), where the
 21 courts found insufficient badges of fraud on which to infer fraudulent intent under Section
 22 522(o). See Amy Brief at 6:24 to 8:3.³⁰

23 The Addison court discussed a conceptual trap in mechanically applying the badges of
 24 fraud analysis to Section 522(o): fraudulent transfers implicated by the badges of fraud typically
 25 involve the debtor's movement of asset values to third parties, while the latter statute involves
 26 the debtor's movement of asset values to another asset of the debtor. Thus, the activity

27
 28 ³⁰ Amy Tarkanian's reference to the Arends case occurred in the opening and closing arguments of her counsel at the evidentiary hearing.

1 contemplated by Section 522(o) invariably implicates at least three of the badges of fraud: the
 2 debtor's exempt asset is enhanced by the disposition of a non-exempt asset (transfer of value to
 3 an insider); the debtor claims the enhanced asset as exempt (debtor has retained possession or
 4 control); and the debtor disposed of non-exempt assets prior to filing bankruptcy (debtor was
 5 insolvent or became insolvent shortly after the transfer). 540 F.3d at 814 n.12. Because pre-
 6 bankruptcy exemption planning is generally permitted, however, the Addison court required the
 7 identification of "extrinsic evidence of fraud" beyond the conversion of non-exempt to exempt
 8 assets to support a finding of fraudulent intent. 540 F.3 at 814.³¹

9 In Stanton, the trial court did not fall into the conceptual trap discussed in Addison.
 10 Compare In re Chin, 492 B.R. at 131, citing Lippe v. Bairnco Corp., 249 F.Supp.2d 357, 375
 11 (S.D.N.Y. 2003) (absence of badges of fraud constituting evidence of lack of intent to defraud).
 12 Indeed, the court emphasized that the existence of any or all of the badges of fraud is not
 13 dispositive of the issue of impermissible intent nor does it even create a presumption of such
 14 intent. 457 B.R. at 93-94. In Stanton, the court emphasized the timing and unusual nature of
 15 the debtor's disposition of non-exempt assets. 457 B.R. at 94.³² The court also considered the
 16 debtor's explanations for the transfers and found both the explanations and the debtor's
 17 testimony not to be credible. Id. at 95-96. The court concluded that the debtor had disposed of

18
 19 ³¹ The Arends case cited by Amy was decided by an outstanding Iowa bankruptcy court
 20 judge who serves as a visiting judge in this court. Beyond that connection, that decision is not
 21 particularly persuasive here because there is a substantial difference between the value of the
 22 assets disposed of in that case compared to the instant case (\$28,000 versus \$400,000). That
 23 disparity might imply a more than subtle difference in the motivations of the respective debtors.
 24 Moreover, the Arends court determined that the assets disposed of were in fact exempt under
 25 Iowa law and the debtors' act of unnecessary exemption planning was due to incorrect advice of
 26 their bankruptcy counsel. 506 B.R. at 519 and 522-23. Finally, the trustee's objection under
 27 Section 522(o) was primarily based on inaccuracies in the debtors' schedules and testimony
 28 attributable to the admittedly improper advice or other mishandling of the case by the debtors'
 attorney. Id. at 525. This is far different from the factual and legal issues raised by the FDIC in
 the instant proceeding.

³² With respect to the "insolvency" badge of fraud, the court found the evidence to be
 inconclusive. 457 B.R. at 95-96 & no.13. In the instant case, Daniel Tarkanian testified that he
 did not have the kind of money to pay the FDIC Judgment and therefore had no intention of
 paying it.

1 numerous non-exempt assets with intent to hinder and delay the judgment creditor. Id. at 96.
 2 Accordingly, the Stanton court applied Section 522(o) and reduced the debtor's interest in the
 3 residence by the amount her homestead was enhanced. Id. at 97³³

4 In the present case, the timing of the repayment of loans by JAMD and the Daniel
 5 Tarkanian congressional campaign fund, and the use of the loan payments to pay down the
 6 mortgage on the Residence, all commencing within six weeks after the FDIC Judgment was
 7 entered, infers that the Debtors disposed on their claims against JAMD and the congressional
 8 campaign fund with the intent to hinder or delay the FDIC's collection efforts. Additionally,
 9 because Daniel Tarkanian controlled both the repayment of the loans by JAMD and the
 10 congressional campaign fund, and the use of the funds to pay the mortgage, the FDIC maintains
 11 that the Debtors' intent to hinder or delay has been established. Moreover, the FDIC argues that
 12 the Debtors' explanations for their actions are not credible.

13 Debtors maintain that their principal payments in July and August 2012 were done out of
 14 concern for the health of Daniel Tarkanian's parents. They argue that after Jerry Tarkanian had
 15 a heart attack in March 2012, it became more important to remain in the Residence located close
 16 by. To remain in the Residence, Daniel Tarkanian contends that a substantial reduction of the
 17 principal balance was necessary to ensure that the Debtors could afford to make monthly
 18 payments if the interest rate on their loan significantly increased. Debtors maintain that they did
 19 not intend to hinder, delay or defraud creditors, but instead disposed of their nonexempt assets to
 20 remain nearby to Daniel Tarkanian's parents.

21 The FDIC rejects this explanation. It maintains that Jerry Tarkanian's health deteriorated
 22 sharply beginning with his fall that occurred in the summer of 2009, leading to Miller describing

23
 24 ³³ The specific facts of Stanton were that the debtor had purchased her Nevada residence
 25 in 2002 for \$252,000. Of the purchase price, the debtor borrowed \$175,000. Through a variety
 26 of lump sum payments, she quickly reduced the principal balance of the loan. In 2008, after her
 27 sister obtained a \$525,000 judgment against her, the debtor orchestrated various transactions that
 28 resulted in the \$89,945 balance of her residential mortgage being paid off. 457 B.R. at 84 and 91
 n.11. Because there was no question that the entire value of her residence could be protected by
 the \$550,000 homestead available under Nevada law, the pay off enhanced her homestead claim
 by \$89,000. In other words, under Section 522(o), the amount of the homestead value
 attributable to the challenged transactions was \$89,945.

1 him as a walking time bomb in March 2010. In spite of Daniel Tarkanian being informed of this
2 description in 2010, the FDIC maintains that Daniel Tarkanian did nothing to reduce the
3 principal on the mortgage until after the FDIC Judgment was entered on May 22, 2012.

4 Similarly, the FDIC argues that Jerry Tarkanian had many other significant health problems
5 between 2009 and 2012, and still the Debtors did nothing to retain the Residence until after the
6 FDIC Judgement was entered. In other words, the FDIC contends that Jerry Tarkanian's health
7 had little to do with the Debtors' decision to reduce the principal balance of their mortgage.

8 The FDIC also argues that Daniel Tarkanian's concerns over the monthly interest only
9 payments on the loan are illusory. It refers to the reduction in the monthly payment from
10 approximately \$3,400 at the inception of the residential loan in 2005 to \$1,552 at the first interest
11 rate change in July 2010. It also refers to subsequent interest rate changes where the monthly
12 payments fluctuated but never exceeded \$1,552, culminating in a monthly payment of \$1,209 in
13 July 2012. Thus, the FDIC maintains that Daniel Tarkanian's purported concern over his ability
14 to respond to interest rate fluctuations is belied by the actual history of the Debtors' loan.
15 Coupled with the declines in Jerry Tarkanian's health for many years prior to entry of the FDIC
16 Judgment, the FDIC argues that Daniel Tarkanian's sudden concern over possible interest rate
17 increases simply lacks credibility.

18 The other witnesses who testified contributed only modestly, if at all, to the issue of
19 credibility. The accounting testimony from Main established only that Daniel Tarkanian
20 characterizes the loan transactions and other financial activity of the entities for which Main
21 prepares tax returns, including JAMD, the Tarkanian Basketball Academy, Tark, LLC, and
22 certain trusts managed by Daniel Tarkanian. Main testified that he received the information
23 from Daniel Tarkanian in the form of a spreadsheet, and compared the information against bank
24 statements and the like, but never saw any documentation memorializing loans between Daniel
25 Tarkanian and JAMD. As previously discussed, the medical testimony from Miller established
26 that Jerry Tarkanian had significant health issues prior to 2009 and has had significant health
27 setbacks since 2009. Miller's testimony also established that Daniel Tarkanian as well as his
28 sister Jodie keep abreast of their father's medical condition. Miller's testimony further

1 established that Lois Tarkanian also has serious medical issues. Neither Main nor Miller were
2 consulted nor participated in the transactions resulting in the principal reductions for the
3 mortgage on the Residence.

4 The testimony from Lois Tarkanian confirmed an exceptionally close relationship
5 between Daniel Tarkanian and his father, Jerry Tarkanian, both in the past as well as in the
6 present.³⁴ Her testimony established that she would have great difficulty caring for Jerry
7 Tarkanian by herself. Her testimony also established, however, that she was not consulted nor
8 did she authorize or participate in the transactions resulting in the principal reductions to Daniel
9 Tarkanian's mortgage, but that she would approve the transactions now.

10 The testimony from Jodie Tarkanian Diamant confirmed that Daniel Tarkanian spends
11 more time with Jerry Tarkanian than any of his other children. Her testimony confirmed that
12 Jerry Tarkanian suffered a major health incident in 2009 and that she and her siblings recently
13 have had meetings concerning the health of their parents. Her testimony established that Daniel
14 Tarkanian's close proximity to their parents' home was important in responding to a recent
15 additional heart attack suffered by Jerry Tarkanian. Her testimony also established, however,
16 that she was not consulted nor did she authorize or participate in the transactions resulting in the
17 principal reductions to Daniel Tarkanian's mortgage.

18 The testimony from Amy Tarkanian confirmed that her husband was concerned about
19 Jerry Tarkanian's health after the latter's heart attack in March 2012. She also testified,
20 however, that she did not discuss with Daniel Tarkanian, nor did she participate in, the
21 transactions resulting in the principal reductions to her mortgage.

22 The focus then, is on the credibility of Daniel Tarkanian's explanation that he disposed of
23 the claims against JAMD and the congressional campaign fund with the intent of living close to
24

25 ³⁴ Both Lois Tarkanian and Daniel Tarkanian testified that the strong bond between Jerry
26 Tarkanian and Daniel Tarkanian is consistent with relationship between a father and the eldest
27 son in Armenian culture. As there is no evidence even offered by the FDIC to dispute the close
28 relationship between Daniel Tarkanian and his father, it is not entirely clear why their ethnic
heritage or the notion of primogeniture was even raised. Certainly children can form
exceptionally close bonds with their parents without regard to immutable characteristics or
events.

1 his parents, or whether he disposed of the claims with intent to hinder or delay collection of the
2 FDIC Judgment. Based on the timing of his actions, the interrelationships between the entities,
3 and the inconsistencies in the record, the court concludes that both intentions were present. As a
4 result, Section 522(o) applies in this case.

5 The FDIC concedes and the credible testimony of the Debtors and their family members
6 establish beyond question their love for Jerry Tarkanian as well as their concerns for his health.
7 The evidence also establishes beyond question that the close proximity between the Residence
8 and the parents' home is at least convenient and perhaps vitally important in assuring the
9 presence of a family member available to assist in the care of Jerry Tarkanian and, if needed,
10 Lois Tarkanian.³⁵ No one disputes that paying the mortgage down from \$648,000 to \$248,000
11 makes it far easier for the Debtors' to meet their monthly payments on the Residence even if the
12 interest rate increases sharply. No one disputes that the end ultimately intended by Daniel
13 Tarkanian - providing for the care of aging parents-- was both common and permissible. The
14 means he chose to achieve that end, however, were not permissible under Section 522(o).

15 As previously noted, Daniel Tarkanian testified in his declaration that non-exempt assets
16 were not disposed of with intent to hinder, delay or defraud his creditors. The timing of Jerry
17 Tarkanian's health concerns, however, infer that the intent was to hinder or delay creditors rather
18 than only to address the needs of Daniel Tarkanian's parents.³⁶ As was the case in Stanton, the
19 timing of the principal payments made by Daniel Tarkanian is critical.

20 On July 12, 2007, the Debtors personally guarantied a loan by La Jolla Bank to Vegas
21 Diamond Properties in the amount of \$14,568.750. By March 1, 2009, the loan was in default as
22
23

24 ³⁵ Jerry Tarkanian did not testify at the hearing, but Lois Tarkanian did. Despite her
25 serious health concerns, Lois Tarkanian remarkably displayed no ill effects during her courtroom
26 appearance and testimony.

27 ³⁶ Debtors were not asked at the hearing whether any consideration was given to having
28 the parents simply move into the six bedroom, five bathroom Residence along with the Debtors.
Instead, it appears that in 2011, JAMD repaid \$242,000 in loans to the parents so they could
repair and retrofit their residence for a handicap senior. See Daniel Declaration at ¶ 22.

1 default interest already was being charged on the loan.³⁷ During 2009, Jerry Tarkanian was
2 being treated for a variety of ailments, including thyroid, back, blood pressure, cholesterol, eye,
3 and balance issues. He already had more than six stents placed into his heart. In the summer of
4 2009, Jerry Tarkanian suffered a fall while in San Diego. His internist, Miller, saw him in
5 August and thought Jerry Tarkanian was in far worse condition than in prior visits. Jodie
6 Tarkanian Diamant characterized her father's fall as the first major incident involving his health.

7 By the spring of 2010, Miller described Jerry Tarkanian as a "walking time bomb" and
8 conveyed that description to Daniel Tarkanian and other members of his family. Despite these
9 red flags concerning his father's health, no steps were taken by Daniel Tarkanian to reduce the
10 principal owed on the Residence or to refinance the Residence in order to lock in a lower
11 monthly payment.

12 On May 6, 2010, the FDIC as receiver for La Jolla Bank commenced suit in the federal
13 district court in San Diego on the Debtors' personal guaranty of the \$14,568,750 loan. The
14 Debtors' parents, Jerry and Lois Tarkanian, as well as Jodie Tarkanian Diamant and her
15 husband, and George Tarkanian, also were named defendants. On or about July 1, 2010, the
16 interest-only payment on the Debtors' mortgage decreased from \$3,105.00 per month to
17 \$1,552.50 per month, while the principal balance, of course, remained at \$647,999.99.³⁸ By
18 December 2010, Miller believed that Jerry Tarkanian's cognitive abilities had decreased
19 considerably.

20 In 2011, Miller believed that Jerry Tarkanian's health continued a downward spiral. On
21 or about February 1, 2011, the interest-only payment on the Debtors' mortgage decreased from
22 \$1,552.50 per month to \$1,485.00 per month. In the middle of 2011, Jerry Tarkanian suffered
23 another fall. It required Miller to drain his elbow. Despite these additional red flags concerning
24

25 ³⁷ Attached as Exhibit "A" to the FDIC Judgment is an Estimated Statement of Account
26 on which the \$16,995,005.17 judgment was determined. Included in the statement is a figure for
27 default interest from March 1, 2009 to May 21, 2012. Thus, some time prior to March 1, 2009,
the borrower presumably had defaulted on the loan.

28 ³⁸ Portions of a Bank of America statement showing the payment history on the Debtors'
mortgage was admitted as Exhibit "6."

1 his father's health, in addition to the pronounced fluctuation in the interest rate charged on the
2 mortgage, no steps were taken by Daniel Tarkanian to reduce the principal owed on the
3 Residence or to refinance the Residence in order to lock in a predictable monthly payment.

4 On or about August 1, 2011, the interest-only payment on the Debtors' mortgage
5 decreased from \$1,485.00 per month to \$1,417.50 per month. On November 21, 2011, in the
6 FDIC Collection Action, the FDIC filed its motion for summary judgment with respect to its
7 claims on the personal guaranties. On or about February 1, 2012, the interest-only payment on
8 the Debtors' mortgage increased from \$1,417.50 per month to \$1,552.50 per month. In March
9 2012, Jerry Tarkanian suffered a heart attack while at a dermatologist appointment and was
10 admitted to a hospital. Despite these additional red flags concerning his father's health, plus two
11 opposite fluctuations in the interest rate charged on the mortgage, no immediate steps were taken
12 by Daniel Tarkanian to reduce the principal owed on the Residence or to refinance the Residence
13 in order to lock in a stable monthly payment.

14 On May 4, 2012, however, the FDIC's summary judgment motion was granted. On May
15 22, 2012, judgment was entered in the FDIC Collection Action against the Debtors and the other
16 named defendants in the amount of \$16,995,005. On June 3, 2012, Daniel Tarkanian requested
17 Phoenix Home Life to loan \$110,000 of the cash value from each of the insurance policies on the
18 lives of Jerry Tarkanian and Lois Tarkanian. On July 2, 2012, Daniel Tarkanian opened an
19 account at Wells Fargo Bank for the parents' irrevocable trust. On July 3, 2012, two separate
20 checks in the amount of \$110,000 were issued by Phoenix Life Insurance Company payable to
21 the parents' irrevocable trust of a loan against his parents' life insurance policies. On July 9,
22 2012, Daniel Tarkanian deposited the insurance company checks into the new account at Wells
23 Fargo Bank. On July 10, 2012, the funds borrowed by the parents' irrevocable trust were loaned
24 to JAMD. On July 11, 2012, the Daniel Tarkanian congressional campaign repaid Daniel
25 Tarkanian \$53,755.83 that he previously loaned to his U.S. Senate campaign. On July 12, 2012,
26 JAMD used the \$220,000 borrowed from the parents' irrevocable trust plus an additional
27 \$30,000 of operational funds to repay Daniel Tarkanian \$250,000 that Daniel Tarkanian had
28 previously loaned to JAMD. On July 12, 2012, Daniel Tarkanian obtained from his Wells Fargo

1 Bank account a cashier's check payable to Bank of America in the amount of \$300,000, using
2 the loan repayments from JAMD and the congressional campaign, which is delivered as a
3 principal payment on his mortgage.

4 Daniel Tarkanian testified that all of these transactions that were set into motion eleven
5 days after the FDIC Judgment was entered, i.e., borrowing on his parents' life insurance policies,
6 opening the new bank account at Wells Fargo, JAMD borrowing and the irrevocable trust
7 loaning \$220,000, JAMD using \$30,000 of operating funds, JAMD's repayment out of its
8 checking account the funds borrowed from Daniel Tarkanian, and Wells Fargo Bank's issuance
9 of a cashier's check payable to Bank of America, were all determined and carried out by the
10 same person: Daniel Tarkanian. Neither his wife Amy, nor any of Daniel Tarkanian's family
11 members were consulted in advance or were even aware of the transactions.

12 On July 27, 2012, the Tarkanian Basketball Academy loaned and JAMD borrowed,
13 \$50,000. On or about August 1, 2012, the interest-only payment on the Debtors' mortgage
14 decreased from \$1,552.50 per month to \$869.00 per month due to the July principal reduction.
15 On August 3, 2012, JAMD used the \$50,000 borrowed from the Tarkanian Basketball Academy
16 to repay Daniel Tarkanian \$50,000 that Daniel Tarkanian had previously loaned to JAMD. On
17 August 3, 2012, Daniel Tarkanian obtained from his Wells Fargo Bank account a cashier's check
18 payable to Bank of America in the amount of \$50,000, which is delivered as a further principal
19 payment on his mortgage. Daniel Tarkanian testified that all of these transactions, i.e., JAMD
20 borrowing and the Tarkanian Basketball Academy loaning \$50,000, JAMD's repayment out of
21 its checking account of funds borrowed from Daniel Tarkanian, and Wells Fargo Bank's
22 issuance of a cashier's check payable to Bank of America, were all determined and carried out
23 by Daniel Tarkanian. As with the prior principal payment, neither his wife Amy nor any of his
24 family members were consulted in advance or were even aware of these transactions.

25 On August 22, 2012, JAMD used \$50,000 from its operating funds to repay Daniel
26 Tarkanian another \$50,000 that Daniel Tarkanian had previously loaned to JAMD. On the same
27 date, Daniel Tarkanian obtained from his Wells Fargo Bank account a cashier's check payable to
28 Bank of America in the amount of \$50,000, which is delivered as another principal payment on

1 his mortgage. Daniel Tarkanian testified that all of these transactions, i.e., JAMD using the
 2 operating funds in its checking account to repay funds borrowed from Daniel Tarkanian, and
 3 Wells Fargo Bank issuing a cashier's check payable to Bank of America, were all determined
 4 and carried out by Daniel Tarkanian. As with the two prior principal payments, neither his wife
 5 Amy nor any of his family members were consulted in advance or were even aware of these
 6 transactions.³⁹

7 Daniel Tarkanian testified that he had never previously used cashier's checks to make
 8 any mortgage payments to Bank of America. All of the cashier's checks were signed by a
 9 representative of Wells Fargo Bank because they were written on the bank's funds rather than
 10 Daniel Tarkanian's funds. As such, neither the FDIC nor any other creditor could reach those
 11 funds by post-judgment levy or pre-judgment attachment of the Debtors' bank accounts.⁴⁰
 12 Because the principal reductions commenced with urgency only after the FDIC Judgment was
 13 entered, and the practice of using only cashier's checks for principal payments occurred only
 14 after the FDIC Judgment was entered, the court can and does conclude that these steps were
 15 undertaken to both hinder and delay the collection efforts of creditors as well as to reduce the
 16 principal balance of the mortgage.

17 This conclusion is bolstered by the fact that at the time the FDIC was actively pursuing a
 18 multi-million dollar judgment on its claim, it was not the only creditor holding or perhaps
 19

20 ³⁹ As a result of the two additional principal payments in August 2012, on or about
 21 September 1, 2012, the interest-only payment on the Debtors' mortgage further decreased from
 22 \$869.00 per month to \$621.63 per month. On or about February 1, 2013, the interest-only
 payment further decreased to \$589.82 per month. On or about August 1, 2013, the interest-only
 payment on the Debtors' mortgage decreased to \$543.92 per month.

23 ⁴⁰ A cashier's check is written on a bank's own funds, see Nev.Rev.Stat. 104.3104(7),
 24 and under NRS 104.3412(1)(a) must be honored even if there is a levy upon the purchasing
 25 customer's bank account. See Pelton v. Meeks, 993 F.Supp. 804, 808 (D.Nev. 1998) ("In this
 26 case, Mr. Meeks withdrew the \$27,000 via bank draft, purchased the cashier's check, and gave it
 27 to his wife; such a cashier's check is not subject to revocation or stop-payment and all Ms.
 28 Meeks had to do to take possession of the money was present it to the bank."). In other words,
 delivery of a cashier's check is the equivalent of delivering cash and is subject to collection only
 through possession. Levying upon the judgment debtor's bank account would be too late.
 Moreover, attempting to physically obtain cash or a cashier's check in the possession of a third
 party requires the judgment creditor to know who has it.

1 pursuing multi-million dollar claims against the Debtors. When they commenced their
 2 bankruptcy proceeding on December 19, 2013, Debtors scheduled possible claims against them
 3 exceeding \$17,000,000 by creditors NSB and Stancorp, based on personal guaranties of JAMD's
 4 indebtedness. Thus, not only does it appear that the Debtors were confronted with the FDIC
 5 Judgment which they admittedly did not have the funds to pay, their primary source of funds for
 6 payment of the principal on their mortgage, JAMD, also had other debt obligations exceeding the
 7 amount of the FDIC Judgment. Daniel Tarkanian testified that JAMD was upside down several
 8 million dollars at the time he was considering the option of making the principal reductions on
 9 his mortgage. Moreover, NSB, which apparently extended loans totaling approximately
 10 \$14,800,000 to JAMD starting in 2005, was actively monitoring Daniel Tarkanian's
 11 management of JAMD during 2012.⁴¹ His use of JAMD's apparently limited and closely
 12 monitored resources to repay loans to JAMD's interest-holders, all while never disclosing those
 13 loan repayments to NSB, infers an intent to hinder or delay those additional creditors.⁴²

14 The interrelationship between the various family entities also suggests the type of
 15 intention forbidden by Section 522(o). An individual who has unfettered control over the
 16 finances of multiple entities can determine who, when, where, why, and how obligations
 17 between the entities will be incurred and repaid. Daniel Tarkanian testified, and both Lois
 18 Tarkanian and Jodie Tarkanian Diamant confirmed, that he manages the affairs of JAMD, the
 19 Tarkanian Basketball Academy, Tark, LLC, the parents' irrevocable trust, and other family

21 ⁴¹ Daniel Tarkanian testified that he never disclosed to NSB any of JAMD's loan
 22 repayments to him in 2012, nor has he disclosed to NSB any loan repayments by JAMD to
 23 family members since 2005. He explained that the NSB loan documents do not require such
 24 disclosures. The NSB loan documents were not offered into evidence by the FDIC nor the
 Debtors.

25 ⁴² It must be remembered that the FDIC Judgment did not include JAMD, the Tarkanian
 26 Basketball Academy, or Tark, LLC, as none of them were borrowers under or guarantors of the
 27 original loan by La Jolla Bank to Vegas Diamond Properties, LLC. Those entities are neither
 28 judgment debtors nor bankruptcy debtors, and claims under the Nevada fraudulent transfer
 statutes, see Nev.Rev.Stat. 112.140, et seq., have not been brought against them. As previously
 noted, however, the Debtors have scheduled themselves as co-obligors with JAMD as to the
 claims of both NSB and Stancorp, aggregating in excess of \$17,000,000.

1 entities. All three testified that Daniel Tarkanian does not consult and is not required to consult
2 with his family before making decisions for the family business entities, including inter-entity
3 loans. Only after he takes action does Daniel Tarkanian report his activities to his family
4 members and then only in the form of spreadsheets that he prepares.⁴³

5 The FDIC does not dispute that the actions taken by Daniel Tarkanian without prior
6 notice or prior consent of his family members can be ratified. It appears from the testimony of
7 Lois Tarkanian and Jodie Tarkanian Diamant that they have either ratified, consented to, or do
8 not object to Daniel Tarkanian's decisions to have JAMD borrow funds from the life insurance
9 policies or from the Tarkanian Basketball Academy so that JAMD could repay prior loans made
10 by Daniel Tarkanian. Among members of a close family, this is hardly surprising. The problem,
11 however, is that Daniel Tarkanian's family has placed him in, or allowed him to assume, a
12 hopelessly conflicted position where the best interests of his extended family may not match the
13 best financial interests of the entities he manages. Even he testified that the roughly \$400,000
14 principal reduction on the Residence was a bad financial decision because it did not produce an
15 equivalent amount of equity in the property. Additionally, while the action served the common
16 family objective of keeping Daniel Tarkanian nearby to assist in the care of his parents, it may
17 not have been the best business decision at the time for JAMD to repay the loans previously
18 made by Daniel Tarkanian.⁴⁴ This interrelationship gave Daniel Tarkanian the unchecked ability
19 to dispose of non-exempt assets to hinder or delay his creditors, which the court concludes that
20 he did in this case.

21 Finally, Daniel Tarkanian's testimony regarding his purported intentions was

22
23 ⁴³ As previously noted, Main testified that the tax returns he prepares for the various
24 entities are based on the spreadsheet information provided by Daniel Tarkanian. Main testified
25 that he compares any reported loan activity against the bank statements, mortgage statements,
26 and checkbooks, but does not audit the information and has never seen any loan documentation.
He also prepares the Debtors' personal tax returns and has never audited whether funds received
by Daniel Tarkanian from JAMD are compensation or loan repayments.

27 ⁴⁴ Daniel Tarkanian testified that there is an unwritten policy for JAMD to repay any
28 loans made by family members whenever the family member needed the money back.
Repayment could be accomplished by JAMD borrowing money from other family members or
family-related entities.

1 contradictory. In his declaration, Daniel Tarkanian attested that at the time the principal
 2 payments were made, "... the home was underwater" because he "owed approximately
 3 \$648,701.92 and the property was valued at \$342,369 by the Clark County Assessor's office for
 4 the 2011-2012 tax year." Daniel Declaration at ¶ 10. He also stated that the amount of the
 5 principal reduction "was calculated to provide an estimated 80/20 loan to value ratio on the
 6 residence so that we could refinance the home and remain there to care for my parents." Daniel
 7 Declaration at ¶ 8.⁴⁵ Daniel Tarkanian also attested that "The Payments were in no way made to
 8 hinder, delay, or defraud my creditors. We knew when we made the Payments that we would not
 9 receive a dollar for dollar increase in equity in our home. We did not make the Payments to
 10 acquire or increase equity in our home; we made the Payments to enable us to remain, with our
 11 children, in the home in order to care for my parents." *Id.* (Emphasis added).

12 A "loan to value ratio" typically reflects the amount of the secured debt in proportion to
 13 the value of the collateral. An owner's "equity" in its collateral typically represents the
 14 difference between the amount of the debt and the collateral's value. The loan to value ratio can
 15 be reduced and the amount of equity can be increased either by reducing the amount of the debt
 16 or increasing the value of the collateral. Obviously, a principal reduction intended to provide an
 17 80 percent loan to value ratio either increases the existing equity in the subject collateral or
 18 creates equity in the collateral where none previously existed. It is not readily apparent how one
 19 can seek to improve the loan to value ratio on encumbered property without also seeking to
 20 acquire or increase the equity in the same property. On its face, Daniel Tarkanian's testimony
 21 that the principal payments were not made with intent to acquire or increase the equity in the
 22 Residence is contradicted by his own testimony that there was no previous equity in the
 23 Residence and that he calculated the payments to provide an 80/20 loan to value ratio. In this
 24 respect, Daniel Tarkanian's characterization of his intention is not credible.

25 In summary, the Debtors clearly intended to keep the Residence so they could remain
 26 living close to Jerry Tarkanian and Lois Tarkanian, both of whom they love. To achieve that
 27

28 ⁴⁵ If that was the calculation, then reducing the principal balance to roughly \$248,000 on
 a property value of \$342,369 resulted in a debt to value ratio of approximately 72/28.

1 end, however, they disposed of their claims against JAMD and the Daniel Tarkanian
 2 congressional campaign with the intent to hinder or delay their creditors, particularly the FDIC.
 3 Because the proceeds of those non-exempt assets were used to create the equity in their
 4 Residence for which they now claim their homestead exemption, Section 522(o) applies in this
 5 case. This aspect of the Homestead Objection will be sustained. Thus, an order will be entered
 6 reducing the value of the Debtors' interest in their homestead by \$202,000, i.e., the amount of
 7 equity in their Residence on the petition date that is attributable to the disposition of the non-
 8 exempt assets.

9 **III. The Innocent Spouse Doctrine.**

10 Amy maintains that she had no knowledge of or participation in any of the
 11 measures taken by Daniel Tarkanian. Amy testified to only one mention by her husband of the
 12 importance of retaining the Residence after Jerry Tarkanian suffered a heart attack in March
 13 2012. She insists that she had no involvement in the financial affairs of the household nor the
 14 financial affairs of her husband or his family, and that she had no discussions with her husband
 15 as to how the mortgage would be paid or the FDIC Judgment would be satisfied. She argues that
 16 she is an "innocent spouse" who should not lose her homestead protection for one-half of the
 17 exempt value of the Residence. See Amy Brief at 12:24-27, citing Matter of American Business
 18 Machines, Inc., 6 B.R. 166 (Bankr.D.Nev. 1980).⁴⁶

19 Daniel Tarkanian testified that he makes all financial decisions in his marriage to Amy
 20 due to undescribed financial difficulties that Amy had before their marriage. He confirmed that
 21 his wife had no involvement in the decision to have loans be repaid by JAMD as well as the
 22 congressional campaign fund, and then using the funds to pay down the mortgage.

23
 24 ⁴⁶ In American Business Machines, a joint liquidation petition was filed under the
 25 Bankruptcy Act by a married couple whose bankruptcy trustee consensually sold the debtors'
 26 residence. The debtors then claimed a homestead interest in the proceeds. The Internal Revenue
 27 Service ("IRS") asserted a tax lien claim against only the husband for his failure to withhold
 28 payroll taxes. 6 B.R. at 167 & n.3. While acknowledging that a federal tax lien may have
 priority over the interests of a defaulting taxpayer spouse in his homestead, 6 B.R. at 170-71, the
 court applied its equitable powers to allow the non-taxpayer spouse to retain one-half of the
 proceeds of the sale of the homestead, while the IRS received the other half of the proceeds in
 view of its superior tax lien. 6 B.R. at 172.

1 Amy also disclaimed knowledge of even the most basic economic elements of her
 2 family's household, e.g., the amount expended on utilities, the amount of private school tuition
 3 for her children, the amount of the monthly mortgage payment, the existence of any bank
 4 accounts, or the amount earned by her husband. She testified that she signed any documents that
 5 her husband gave to her, including the Personal Financial Statement and Affidavit of Financial
 6 Condition in December 2011, without verifying any information. Moreover, Amy testified that
 7 even though she was a licensed real estate agent early in her relationship with her husband, she
 8 has no understanding of a homestead declaration, no idea of whether she is on title to the
 9 Residence, and no idea whether she has any equity in the Residence.

10 Amy's portrayal of herself as a virtual "Stepford" wife as to her marital finances⁴⁷
 11 contrasted sharply with the FDIC's portrayal of Amy as a statewide political party leader,
 12 successful political fundraiser, effective political campaigner for her husband, and savvy
 13 political pundit paid to appear on local television. Although it is not unheard of or perhaps not
 14 even unusual for competent individuals to compartmentalize their personal and professional
 15 lives, or to define complementary roles in a marriage, reconciling perhaps diametrically opposite
 16 versions of the same person is unusual at best.

17 Based on her testimony as well as that of Daniel Tarkanian, it might be easy to conclude
 18 that Amy is truly an innocent spouse for whom the protection of the homestead is appropriate
 19 regardless of any inappropriate conduct of her spouse. Unlike the situation in American
 20 Business Machines, however, Amy is jointly and severally liable on the FDIC Judgment. Unlike
 21 the situation in American Business Machines, the FDIC debt is not a specific penalty imposed
 22 only on the "responsible persons" of an employing entity. See 26 U.S.C. §§ 6671(b) and
 23 6672(a). Unlike the situation in American Business Machines, the liability to the FDIC is not a

24
 25 ⁴⁷ The term "Stepford Wife" has been defined as "a woman who does not behave or
 26 think in an independent way, always following the accepted rules of society and obeying her
 27 husband without thinking." Oxford Learner's Dictionaries (2014 Oxford University Press)
 28 (online). The term is based on a 1972 novel written by author Ira Levin in which married women
 in the fictional community of Stepford, Connecticut, are depicted as entirely submissive to the
 demands of their husbands. In a 2004 film adaptation, the term was expanded to apply to
 spouses or partners of either gender.

1 federal tax obligation for which relief to an "innocent spouse" might be available even outside of
 2 the equitable jurisdiction of a federal court. See, e.g., 26 U.S.C. § 6015 (relief from
 3 understatement of personal incomes taxes in joint return). Under these circumstances, the
 4 decision in American Business Machines does not support recognition of an equitable "innocent
 5 spouse" exception to Section 522(o) in this case.⁴⁸ Thus, it is unnecessary to reach a factual
 6 conclusion that reconciles the apparently competing portrayals of Amy's knowledge of or
 7 participation in the disposition of her interest in the Debtors' non-exempt assets.⁴⁹

8 IV. The Relief Provided by Section 522(o).

9 As previously recited, the language of Section 522(o) specifies that "the value of
 10 an interest in real . . . property that the debtor . . . claims as a homestead . . . shall be reduced to
 11 the extent that such value is attributable to any portion of any property that the debtor disposed
 12 of . . . with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt
 13 . . ." 11 U.S.C. § 522(o)(4) (Emphasis added).

14 In Stanton, the court found that the debtor had disposed of non-exempt property with
 15 intent to hinder or delay the objecting creditor, and therefore granted the relief provided by the
 16 language of Section 522(o): it reduced the value in the debtor's interest in her homestead by the
 17 \$89,945 she had paid off on her mortgage. 457 B.R. at 97. In view of that determination, the

18
 19 ⁴⁸ In Namow Corp. v. Egger, 99 Nev. 590, 668 P.2d 265 (Nev. 1983), the Nevada
 20 Supreme Court rejected an "innocent spouse" defense to the imposition of a constructive trust on
 21 a condominium purchased with funds embezzled by the other spouse. Despite the spouse's lack
 22 of knowledge or participation in the embezzlement, the court concluded that a constructive trust
 23 on the condominium was appropriate while allowing the non-culpable spouse to obtain only
 reimbursement for mortgage payments, improvements, taxes paid, and other charges. Compare
Crawford v. Sillette, 608 F.3d 275 (5th Cir. 2010) (condominium paid off by innocent owner with
 funds obtained through Ponzi scheme subject to equitable lien in favor of receiver).

24 ⁴⁹ There actually may be nothing to reconcile. Amy testified that even in the significant
 25 positions she has held in political organizations, the financial decisions were left to others. The
 26 FDIC offered no evidence to the contrary. Amy's asserted financial role in those organizations
 27 appears to be consistent with her limited involvement in the financial decisions in her marriage.
 28 Thus, it may well be that Amy simply admits that the management of finances, both personally
 and professionally, is not one of her strengths and so she delegates or concedes those
 responsibilities to others. Of course, the risks occasioned by doing so may be substantial, but
 that appears to be her choice.

1 bankruptcy trustee stepped in to sell the debtor's homestead and sought an order authorizing him
 2 to market the property. (Stanton ECF No. 144)⁵⁰. At a subsequent hearing on April 3, 2012, the
 3 court referred to its prior ruling as authorizing a "surcharge" of the debtor's homestead for the
 4 amount of the loan payoff, consistent with the circuit decision in Latman v. Burdette, 366 F.3d
 5 774 (9th Cir. 2004). The term "surcharge" was included in the subsequent order. (Stanton ECF
 6 No. 158). The trustee then obtained authorization to employ a real estate agent. (Stanton ECF
 7 No. 170). The residence was thereafter sold with court approval (Stanton ECF No. 208) and the
 8 Trustee received the mortgage payoff amount. (Stanton ECF No.212). The debtor did not
 9 appeal the original order reducing the value of her interest in the homestead under Section
 10 522(o), nor the subsequent orders that resulted in the sale of the residence.

11 In Law v. Siegel, ___ U.S. ___, 134 S.Ct. 1188 (2014), a Chapter 7 trustee sought to
 12 surcharge a recalcitrant debtor's homestead exemption in order to pay allowed administrative
 13 expenses of the estate that far exceeded the amount of the homestead. The net effect of the
 14 surcharge was to deny to the debtor any funds from his homestead. After canvassing the
 15 exceptions and limitations on exemptions imposed by the Bankruptcy Code, including Section
 16 522(o), the Court observed: "The Code's meticulous - not to say mind-numbingly detailed -
 17 enumeration of exemptions and exceptions to those exemptions confirms that courts are not
 18 authorized to create additional exceptions." 134 S.Ct. at 1196. The Court concluded that the
 19 bankruptcy court had neither statutory authority under Section 105(a)⁵¹, nor inherent authority to
 20 deny an exemption on a ground not specified in Section 522. 134 S.Ct. at 1198.

21 In the instant case, the express language of Section 522(o) requires this court to reduce
 22 the value of the Debtors' homestead. However, Section 522(o) does not permit the court to
 23

24
 25 ⁵⁰ All references to "Stanton ECF No." are to the numbers assigned to the documents
 26 filed in the Stanton bankruptcy proceeding, Case No. 10-33338-LED, which remains pending in
 27 this judicial district. The court takes judicial notice of those documents pursuant to FRE 201(b).
 See Gree v. Williams, 2012 WL 3962458 at *1 n.1 (D.Nev. Sep 07, 2012); Braunstein v. Cox,
 2012 WL 3638772 at *1 n.1 (D.Nev. Aug 22, 2012).

28 ⁵¹ Section 105(a) permits the court to issue "any order, process, or judgment that is
 necessary or appropriate to carry out the provisions" of the Bankruptcy Code.

1 surcharge the homestead. Likewise, it does not appear that either Section 105(a) or the court's
2 inherent authority permits it to impress an equitable lien on the Debtors' homestead as a
3 predicate to a forced sale.⁵² Such a remedy would deny the Debtors the homestead available
4 under Nevada law on a basis not expressly permitted by Section 522.⁵³ Thus, the net result of the
5 instant objection may be that the Debtors can remain in their Residence so long as they maintain
6 their monthly mortgage payments.⁵⁴ No other relief will be ordered at this time.

7 CONCLUSION

8 Based on the foregoing, the Homestead Objection will be overruled with respect to the
9 Debtors' entitlement to claim a homestead exemption under Nevada law. The Homestead
10 Objection will be sustained with respect to the application of Section 522(o). A separate order
11 has been entered concurrently with the Memorandum Decision.

12
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14 Notice and Copies sent through:

15 CM/ECF ELECTRONIC NOTICING AND/OR
16 BNC MAILING MATRIX

17 and sent via FIRST CLASS MAIL BY THE COURT AND/OR BNC to:

18 DUANE H. GILLMAN
19 DURHAM JONES & PINEGAR
20 111 EAST BROADWAY, SUITE 900
21 SALT LAKE CITY, UT 84110

22
23 ⁵² As the Nevada homestead exemption is \$550,000 under NRS.115.010(2), it appears
24 that a forced sale of the Residence would produce no proceeds for creditors of the estate unless it
25 is sold for at least \$798,000 (\$248,000 owed on the mortgage, \$202,000 of homesteaded equity
attributable to principal payments, and \$348,000 remaining from the maximum available
homestead exemption).

26 ⁵³ Likewise, the language of Section 522(o) does not include an "innocent spouse"
27 exception to the homestead limitations imposed by Congress.

28 ⁵⁴ Moreover, at this juncture, the Debtors have not sought to avoid the FDIC's judicial
lien under Section 522(f)(1) to facilitate a refinance of the existing loan.

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAS VEGAS, NEVADA

In re:) E-Filed: 05/21/14
DANIEL GEORGE JOHN TARKANIAN)
and AMY MICHELLE TARKANIAN,) Case No.
BK-S-13-20495-MKN
Debtors.) Chapter 7

TRANSCRIPT OF PROCEEDINGS
OF

HEARING RE: MOTIONS
VOLUME 1

BEFORE THE HONORABLE MIKE K. NAKAGAWA
UNITED STATES BANKRUPTCY JUDGE

Tuesday, May 20, 2014

9:30 a.m.

Court Recorder: Helen Smith

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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I N D E X						
	Witness	Direct	Cross	Red.	Rec.	Voir Dire
3	DANIEL TARKANIAN					
4	(By Mr. Gillman)	13				
4	(By Mr. Zirzow)		55			
5	(By Ms. Mock)		59			
6	JAMES D. MAIN					
6	(By Mr. Gillman)	90		105		
7	(By Ms. Mock)		97		112	
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1 (Court convened at 9:37:38 a.m.)

2 THE CLERK: Court is now in session.

3 THE COURT: Please be seated.

4 We're here on the matter of Daniel and
5 Amy Tarkanian.

6 May I have appearances for the record.

7 MR. GILLMAN: Duane Gillman and Tim Cory
8 appearing for Daniel Tarkanian.

9 THE COURT: Okay.

10 MR. ZIRZOW: Your Honor, good morning.
11 Matt Zirzow for Amy Tarkanian.

12 THE COURT: Okay.

13 MS. MOCK: Good morning, your Honor.
14 Janice Mock on behalf of the FDIC as receiver for
15 La Jolla Bank.

16 THE COURT: Okay.

17 MS. MOCK: And I will also be joined this
18 morning by Chuck Kennon --

19 THE COURT: All right.

20 MS. MOCK: -- also representing the FDIC.

21 He is next door just at the moment, your Honor,
22 taking care of a matter on another docket, and he will
23 be here shortly.

24 I --

25 THE COURT: Oh, okay.

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1 MS. MOCK: I apologize for the interruption.

2 THE COURT: All right.

3 Thank you. All right.

4 Counsel, let's see. There was -- I believe sometime
5 yesterday there was a -- it looks like a motion to
6 quash; is that right?

7 And is --

8 MR. GILLMAN: There was, your Honor.

9 THE COURT: Is this your motion, Mr. Gillman?

10 MR. GILLMAN: Yes, your Honor.

11 THE COURT: All right.

12 MR. GILLMAN: If I may address that.

13 THE COURT: All right. Ms. Mock, did you
14 receive a copy of the motion?

15 MS. MOCK: I did, your Honor.

16 THE COURT: Okay. All right.

17 Thanks.

18 MR. GILLMAN: Your Honor, we received notice by
19 checking the docket --

20 THE COURT: Okay.

21 MR. GILLMAN: -- last Friday of the filing
22 of -- or the issuance of a subpoena.

23 We received notice yesterday by service of that
24 subpoena that an additional witness was going to be
25 called after the FDIC rested.

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1 THE COURT: -- to add?

2 MR. ZIRZOW: Your Honor, just for purposes of
3 the record, we would join --

4 THE COURT: Okay.

5 MR. ZIRZOW: -- in the same arguments and just
6 point out to the Court that I believe what counsel for
7 the FDICR is attempting to establish --

8 THE COURT: Okay.

9 MR. ZIRZOW: -- are communications and whatnot
10 with Nevada State Bank.

11 THE COURT: Right.

12 MR. ZIRZOW: Your Honor, I would also note that
13 none of the underlying loan documentation is I believe
14 in evidence, so we have no idea what is or wasn't
15 required per those loan documents --

16 THE COURT: Okay.

17 MR. ZIRZOW: -- what Mr. Tarkanian did or did
18 not disclose, what he was required to disclose.

19 THE COURT: Okay.

20 MR. ZIRZOW: So there's just no context for the
21 evidence in addition to the -- and is evidenced by the
22 late attempt to subpoena.

23 There's no underlying foundational documentation to
24 establish any of the underlying requirements for the
25 loan that allegedly were not satisfied as well.

1 THE COURT: Okay.

2 Thank you. All right.

3 Ms. Mock?

4 MS. MOCK: Thank you, your Honor.

5 THE COURT: All right.

6 Ms. Mock, can I ask you a question before -- again,
7 there is a reference in the motion to lack of time to
8 comply with the subpoena. I didn't see any documents
9 requested by your subpoena order.

10 Am I mistaken or --

11 MS. MOCK: We did not request documents,
12 your Honor.

13 THE COURT: Okay. That's what I thought.
14 Okay. All right.

15 What's your response to the motion?

16 MS. MOCK: Just as a preliminary matter, I know
17 one --

18 THE COURT: Okay.

19 MS. MOCK: -- of the major objections has been
20 that there was --

21 THE COURT: All right.

22 MS. MOCK: -- no fee filed, and the --

23 THE COURT: Okay.

24 MS. MOCK: -- FDIC is not required to tender a
25 witness fee --

1 THE COURT: Okay. Correct.

2 MS. MOCK: -- as the Court knows.

3 THE COURT: All right.

4 MS. MOCK: I would say that we probably should
5 not have filed the notice because we intended to call
6 Ms. Weaver as a rebuttal witness --

7 THE COURT: Okay.

8 MS. MOCK: -- on the basis that I suspect
9 Mr. Tarkanian will now refuse to authenticate any
10 further documents --

11 THE COURT: Okay.

12 MS. MOCK: -- as to his communications --

13 THE COURT: All right.

14 MS. MOCK: -- and questions about his
15 accounting practices --

16 THE COURT: Okay.

17 MS. MOCK: -- questioning his credibility on
18 describing --

19 THE COURT: Okay.

20 MS. MOCK: -- at least to Ms. Weaver --

21 THE COURT: Right.

22 MS. MOCK: -- some of his accounting
23 manipulations as they have been called by her.

24 THE COURT: Okay.

25 MS. MOCK: So my staff filed the notice.

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1 THE COURT: Okay.

2 MS. MOCK: It probably should have just waited
3 until the end of Mr. Tarkanian's testimony today.

4 THE COURT: Okay.

5 Well, my indicated ruling, I intend to grant the
6 motion to quash at this time.

7 MS. MOCK: All right.

8 THE COURT: All right?

9 MS. MOCK: But we do -- of course, if it's
10 necessary to call her, then we'll address it at the end
11 of his testimony.

12 THE COURT: I assume --

13 MS. MOCK: Okay.

14 THE COURT: -- you'll do whatever is
15 necessary --

16 MS. MOCK: Thank you.

17 THE COURT: -- to protect your record. All
18 right.

19 Thank you.

20 Mr. Gillman, again, as I recall --

21 MR. GILLMAN: We were just about --

22 THE COURT: -- when we last --

23 MR. GILLMAN: -- to call Danny Tarkanian.

24 THE COURT: We are going to call two witnesses
25 today --

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1 THE WITNESS: Danny Tarkanian.

2 Danny Tarkanian.

3 DIRECT EXAMINATION

4 BY MR. GILLMAN:

5 Q. Mr. Tarkanian, what is your address?

6 A. 3008 Campbell Circle, Las Vegas, Nevada, 89107.

7 Q. And what is the address of your father?

8 A. 2905 Justice Lane, Las Vegas, Nevada, 89107.

9 Q. Would you turn to Exhibit A in front of you. It's
10 in the binder marked exhibits of Daniel Tarkanian.

11 Do you have that in front of you?

12 A. Yes, I do.

13 Q. Does that plat map --

14 MR. GILLMAN: And, your Honor, this has been
15 stipulated to admissibility.

16 To the extent I fail to, I offer Exhibit A. I
17 believe --

18 THE COURT: All right.

19 MR. GILLMAN: -- it's been received.

20 THE COURT: I believe it's already been
21 admitted.

22 Is that correct, Ms. Mock?

23 THE CLERK: Yes.

24 MS. MOCK: Yes, it is.

25 THE COURT: All right.

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1 | Thank you.

2 MR. GILLMAN: Okay.

3 BY MR. GILLMAN:

4 Q. Does this plat map with the edits added in show the
5 positioning of the two homes?

6 A. Yes, it does.

7 Q. And did you in part purchase your home because of
8 that positioning?

9 A. Yes. That was the primary reason why.

10 Q. Okay. Sir, what is your education?

11 A. Well, I graduated from UNLV with a business finance
12 degree, went to law school at the
13 University of San Diego School of Law.

14 And before that I was --.

15 Q. And did you --

16 | A. -- in high school at --

17 | Q. -- graduate?

18 A. Yeah, and I graduated from law school --

19 Q. And were you --

20 | A. -- and passed --

21 Q. -- admitted to the Bar?

22 A. Yes, the Nevada Bar.

23 Q. Okay. Could you briefly describe the history of
24 your relationship with your father.

25 MS. MOCK: Objection, calls for a narrative.

24 I was -- before I was old enough to be a ball boy, I
25 would follow him to the gyms that he was working at, and

3 I was a ball boy for his teams when I was old enough
4 which means you basically travelled with the team as
5 much as possible and handed out towels and water to the
6 teams as they -- during the game, travel with them in
7 the road trips.

11 My mother's primary focus was education and going to
12 a good school, and I had offers from Princeton, and
13 Penn, and Stanford, and USC.

16 My dad had the worst season he ever had while I was
17 in junior college, and I decided to go and play for him
18 there.

23 Then after college, I went to law school, but when I
24 got -- and practiced a few years, but when I got out, my
25 dad got a job up at Fresno State, and I left my law

1 practice so that I could coach with him in Fresno.

2 It was very important for me to be with my dad at
3 the end of his career. This was going to be his last
4 coaching job.

5 He had had a lot of problems with the NC2A, and I
6 wanted to make sure that I could be there and help him
7 in any way possible.

8 At the end of his stay at Fresno State, he ended up
9 having another NC2A hearing in front of the NC2A
10 infractions committee, and I was his attorney at that
11 hearing. I thought it was very important for me to
12 argue my father's position because I knew how right he
13 was.

14 So through the course of my life, I've spent much of
15 my time with my father, working with my father, and
16 defending my father.

17 BY MR. GILLMAN:

18 Q. Focusing back on the two homes, could you turn to
19 Exhibit B.

20 A. Okay.

21 Q. This has previously been admitted, so would you
22 utilize Exhibit B to describe the way the two homes are
23 connected.

24 A. Well, the homes are not directly connected by the
25 backyards at least of the initial land that each of our

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25 Q. And does he have the same name as your father?

1 A. Yes, he does.

2 Q. Because we may get the opportunity to have this
3 record reviewed by either the district court or
4 Article III judges in the Tenth Circuit, I better ask a
5 little bit more about your father.

6 What did he do for a living?

7 MS. MOCK: Objection to the extent it calls for
8 speculation and the witness may have no personal
9 knowledge.

10 THE COURT: Overruled.

11 THE WITNESS: My father has always been a
12 basketball coach until he retired.

13 BY MR. GILLMAN:

14 Q. And where did he coach?

15 A. His first job?

16 Q. Yeah. Tell me --

17 A. Well --

18 Q. -- where he coached.

19 A. Well, he spent most of his time at UNLV, 19 years at
20 UNLV; 7 years at Fresno State, and that was his last
21 job; 5 years at Long Beach State before UNLV.

22 Then he was in a junior college before that. He
23 spent two years at Pasadena City College; five years at
24 Riverside City College; one year at Antelope Valley
25 High School; one year at Redlands High School -- two --

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1 two years at Redlands High School; and then one year at
2 San Joaquin Memorial --

3 Q. You've done it --

4 | A. -- High School.

5 Q. -- in reverse order, correct?

6 A. I went in reverse order. Yes, sir.

7	Q. Right.
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8 | And at UNLV, did he have some success?

9 | A. He had great success.

10 Q. Did he win an actual championship there?

11 | A. Yes, he did.

12 He won one national championship, went to the
13 Final Four four times, had the winningest percentage of
14 all time for any coach ever when he left UNLV.

15 Q. Okay. A lot of the events that are the subject of
16 this motion occurred in 2012.

17 You were the owner of your home in 2012; is that
18 correct?

19 | A. Yes, I was.

20 Q. And what did you believe was the fair-market value
21 of your home during 2012?

22 MS. MOCK: Objection to the extent it calls for
23 expert opinion and the witness lacks personal knowledge.

24 THE COURT: Overruled. The witness is the
25 owner of the home.

1 THE WITNESS: I felt it was somewhere in the
2 mid 300s, the value.

3 BY MR. GILLMAN:

4 Q. Would you turn --

5 A. 3 --

6 Q. -- to Exhibit C.

7 A. Yes.

8 Q. What is Exhibit C?

9 A. It's a notice of value from the property tax
10 department for the City of Las Vegas -- or the county,
11 Clark County, one or the other..

12 Q. So your assessment, your valuation, is consistent
13 with the county's assessment of \$342,369 of taxable
14 value.

15 A. Yes.

16 The prior year they had 336,497. They said the
17 property went up a little bit to 342,369.

18 Q. Okay. When did you purchase your current home?

19 A. I purchased it in 2005.

20 Q. And is Exhibit D a copy of the deed where you became
21 the owner of that property?

22 A. Yes, it was. Yes, it is,

23 Q. Okay. And you originally took title just yourself,
24 correct?

25 A. Yes.

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1 | Q. Why?

2 A. The person we were working to on the loan said my
3 wife's credit wasn't very good, and it would raise our
4 interest rate if I had her name on it.

5 Q. Okay. In June of 2005, were you required prior to
6 the mortgage or prior to the closing to obtain a deed
7 from your wife as spouse, and is that Exhibit E
8 (indiscernible)?

9 | A. Yes, it is.

10 Q. And that was part of the title company requirements?

11 MS. MOCK: Objection, your Honor, leading I
12 think a number of times now.

13 THE COURT: Sustained.

14 MS. MOCK: Thank you.

15 BY MR. GILLMAN:

16 Q. Do you know why you obtained that deed?

17 | A. I -- I'm not real sure now.

18 Q. But it was required and recorded, correct?

19 | A. Yes.

20 Q. And did you at some point in time on or about
21 May 8th, 2006, convey the home to both you and your wife
22 as community property?

23 MS. MOCK: Objection, leading.

24 THE COURT: Overruled.

25 THE WITNESS: Yes, I did.

1 BY MR. GILLMAN:

2 Q. And is Exhibit F the instrument through which you
3 did that?

4 A. Yes.

5 Q. Okay. And then did you shortly after that convey
6 the home into the Daniel and Amy Tarkanian
7 Revokable Family Trust?

8 A. Yes.

9 MS. MOCK: Same objection, your Honor, leading
10 still.

11 THE COURT: Okay. Overruled.

12 THE WITNESS: Yes, we did.

13 BY MR. GILLMAN:

14 Q. And did you do that pursuant to Exhibit G?

15 A. Yes.

16 Q. And is Exhibit H a true and correct copy of that
17 trust that you created?

18 A. Yes, it is.

19 Q. And is that where title still resides to the home?

20 A. Yes.

21 Q. Would you turn to Exhibit I, please. That is a copy
22 of your adjustable-rate note.

23 Do you --

24 A. Yeah.

25 Q. -- have that --

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1 A. Yeah.

2 Q. -- in front of you?

3 A. Yes, I do.

4 Q. At some point in time, I believe in 2012, you became
5 concerned about this note.

6 What was it about the note that made you concerned?

7 MS. MOCK: Objection, leading.

8 THE COURT: Overruled.

9 THE WITNESS: The note is -- it's an
10 adjustable-rate note that had -- that was going to --
11 the rate was going to adjust when the interest rates
12 went up.

13 BY MR. GILLMAN:

14 Q. So it could mean your interest went up, and,
15 therefore, your payments went up?

16 A. Well, that's what I was concerned about.

17 Over the past few years, we've had the lowest
18 interest rates in a generation.

19 Because the interest rates are so low, the mortgage
20 rate -- the mortgage payment went down about \$1500 a
21 month which included -- I believe that included the --
22 the taxes.

23 When I did this note originally, the interest rate
24 was 5.75 percent, and I was paying close to \$3800 a
25 month in monthly payments.

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23 A. Well, at the end of March, my father was admitted
24 into the hospital. He had a heart attack, and he had
25 aspirated where his lungs were collapsing.

1 It had a devastating effect on everybody in our
2 family including myself.

3 My father's health had been going down some since
4 his 2009 surgery and hospital stay, but he hadn't had
5 another major problems until the March one.

6 Q. How did you respond to that event?

7 A. Well, I was very concerned about how he would be
8 taken care of after he got out of the hospital.

9 As we mentioned, not only did he have the heart
10 attack, but his lungs had collapsed, and that was caused
11 by the fact that -- and I don't --

12 MS. MOCK: Objection to the extent it calls for
13 expert testimony from a physician which Mr. Tarkanian is
14 not.

15 THE COURT: Sustained.

16 BY MR. GILLMAN:

17 Q. What was your concerns about his care?

18 A. My concern was that our family keep a close eye on
19 him to make sure that he ate right, drank right so that
20 he didn't aspirate anymore, make sure that his blood
21 pressure was under control so that it didn't affect his
22 heart.

23 It was the first time after 2012 hospital stay that
24 my father couldn't walk on his own anymore. He had to
25 have a walker or a cane, so there was a concern for him

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2. Also, he's a fall risk where he has to have
3 something -- the Lifeline thing on his neck so that if
4 something happened to him and he fell, he'd get quick
5 attention. So we were concerned that he might fall.

9 | Q. And did you --

11 Q. -- become involved in that care?

13 Q. Did you help him to shower and otherwise take
14 care --

16 | Q. -- of himself?

20 In fact, he -- the other thing he did, he didn't
21 speak much anymore. He -- he had stopped talking a good
22 amount, so we couldn't even tell, you know, what his
23 concerns were.

24 So I would go by the house once a day or more,
25 usually two or three times a day. I would make sure

1 that, you know, he had showered, change him if we had to
2 change him.

3 A lot of times he fell out of his chair or the bed,
4 and my mother would call me and ask me to come over and
5 help get him up because he was too heavy for her.

6 I spent a lot of time taking him places, out to the
7 community, because we felt that as he had interaction
8 with other people it would make him feel better.

9 So I took him a lot of different places, out of town
10 to Fresno to visit friends, locally to a local
11 restaurant that he's very close with the owner there.

12 And then I brought my kids by a lot because it made
13 him very, very happy to see my kids, and it made my kids
14 have an appreciation for their grandfather.

15 Q. After the time period of 2012, have there been other
16 health problems your father has had?

17 A. Yeah. Well, just recently, a little over a month
18 ago --

19 MS. MOCK: Objection to the extent it calls for
20 medical testimony, your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: A little over a month ago, my
23 nephew ran over to our house through the --

24 BY MR. GILLMAN:

25 Q. Through the walkway?

1 A. Through the gate and said -- and said that, you
2 know, Papa was --

3 MS. MOCK: Objection, calling --

4 THE WITNESS: -- sweating.

5 MS. MOCK: -- for hearsay testimony,
6 your Honor, out-of-court witness.

7 THE COURT: That part is sustained.

8 THE WITNESS: He asked me --

9 BY MR. GILLMAN:

10 Q. What happened to your father?

11 A. My -- well, I rushed over to -- through our gate to
12 the house. My father was sweating. His eyes were
13 closing. He was having a hard time breathing.

14 I -- I had my nephew immediately call the ambulance,
15 and after we were there, my sister showed up, and -- and
16 then my mother showed up, and then finally the ambulance
17 showed up.

18 They took him to the hospital where he was diagnosed
19 with another heart attack.

20 Q. Okay.

21 A. And that was about a month ago.

22 Q. And so you were the first adult that arrived?

23 A. Yes, I was.

24 Q. And was that because you live through the gate
25 and --

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1 A. Yes.

2 Q. -- in essence?

3 A. Yes, it was.

4 My nephew had called the different siblings
5 including myself --

6 MS. MOCK: Objection, your Honor.

7 THE WITNESS: -- and our phones were off.

8 MS. MOCK: Calling for hearsay testimony about
9 a nephew who is not here to testify.

10 THE COURT: Sustained.

11 BY MR. GILLMAN:

12 Q. You were the first to come.

13 A. I was the first one to -- to get to the home.

14 Q. Has there been any subsequent --

15 A. Yes.

16 Q. -- any other incidents since that hospitalization?

17 A. Yes.

18 About two weeks ago now, I got a call from my
19 mother, said my father was --

20 MS. MOCK: Objection, hearsay.

21 THE COURT: Sustained.

22 THE WITNESS: Yes. I got -- I got a call from
23 my mother, and so I rushed home to see what was wrong
24 with my father.

25 I called my wife who was still at the house and

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24 MS. MOCK: Your Honor, we believe it contains
25 out-of-court hearsay. We also don't believe that the

1 numbers have been authenticated in terms of the
2 calculations at the bottom.

3 So we would object that it contains an improper
4 legal conclusion and analysis that is going to be for
5 this Court to decide, so we object to Exhibit P.

6 THE COURT: All right.

7 | Mr. Gillman, response?

8 MR. GILLMAN: Your Honor, she did not say
9 specific. She's just a rambling list. There is no
10 legal conclusion.

11 The calculations she has not identified as any error
12 in them. She's had it for months, or at least a month,
13 and she can't do her arithmetic to show there's anything
14 wrong; hence, it is deemed accurate.

15 The foundation for it has been testified to as to
16 his calculations, and the exhibits 1 through 8 attached
17 are the foundation, all of which were documents which
18 were admitted in the FDIC's case in chief.

19 MS. MOCK: Your Honor, if I may respond?

20 THE COURT: You may.

21 MS. MOCK: Yes, Mr. Tarkanian did authenticate
22 the deposit slips and checks that are attached. In
23 terms of those, we don't have any objection.

24 But there is a calculation at the bottom that
25 attempts to define for this Court what the value of

1 equity is comparing a principal amount before reduction
2 and doing some calculations at the bottom that are a
3 matter of legal conclusion for this Court to decide and
4 in working with the trustee.

5 It misrepresents what the market value of the house
6 should be. It is not determined by the value in 2005
7 but, rather, as market value as to the time of the
8 petition date.

9 So we do object --

10 THE COURT: All right.

11 MS. MOCK: -- to the calculations that are
12 below the last green line in Exhibit P.

13 THE COURT: All right. The objection is
14 overruled.

15 You may proceed, Mr. Gillman.

16 MR. GILLMAN: Thank you.

17 THE COURT: All right.

18 BY MR. GILLMAN:

19 Q. Utilizing Exhibit P, would you outline for the Court
20 what steps you took to make a reduction of your mortgage
21 in order to be able to stay near your dad.

22 A. I had loaned JAMD, LLC, a lot of money over the
23 previous years, and there was an amount of money that
24 was owed to me.

25 So what I did was -- and JAMD did not have that

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1 amount of money to pay me back directly.

2 So what I did was the same thing I had done in the
3 past for repayments to other family members. I borrowed
4 money from the Jerry and Lois Tarkanian
5 Irrevocable Trust and loaned that to JAMD.

6 And the first two entries, No. 1, are the request
7 for a loan from each of the respective life-insurance
8 policies on my parents, and that's the first 220,000.

9 I deposited that into the irrevocable trust bank
10 account and then lent that to JAMD as a loan and -- like
11 I had in previous occasions with repayments to family
12 members.

13 Q. Before we go further, I know it's somewhat in the
14 record from your previous testimony, but what is
15 J-a-m-d?

16 A. JAMD is a -- it's a piece of property that has a
17 commercial development on it from my -- that my family
18 owns.

19 Q. Well, is it a corporation, an LLC?

20 A. It --

21 Q. What is it?

22 A. It's an LLC.

23 Q. And who are the owners of that LLC?

24 A. Family members and family entities.

25 Q. By family, your family.

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1 A. My -- my siblings, a family -- a family limited
2 partnership which my parents had a small ownership in
3 and then some entities that the family owned.

4 | Q. Okay. So then all of the owners are family members.

5 | A. Yes.

6 Q. Indirectly or directly.

7 : A. Yes.

8 Q. And what does JAMD have as a property?

9 A. It has 15 acres of land across the street from the
10 San Martin Hospital in the southwest part of Las Vegas
11 on Cimarron and Warm Springs.

12 Currently, there are three buildings built that JAMMD
13 owns. We had built a fourth that was sold to an OB/GYN
14 doctor.

15 Q. And are the buildings of a particular use?

16 A. Yes. There is a 3400-square-foot -- 3460 I
17 believe -- square-foot drive-thru retail pad that has
18 Winchell's and Dunkin' -- Winchell's and a subway in it.

19 We have about a -- there's another retail building
20 that's larger, 13,000 and 3, 400 square feet that has
21 four different -- three different tenants in it -- one,
22 two, three -- three different tenants in it, and then we
23 have a 70,184-square-foot office building that has
24 numerous tenants in it.

25 | Q. Okay.

1 A. And then we have the potential to build three other
2 buildings.

3 Q. And do you manage JAMD's affairs?

4 A. Yes, I do.

5 Q. And does JAMD generate income?

6 A. Yes, it does.

7 Q. And is that income such that loans could be repaid
8 to whoever made loans to it?

9 MS. MOCK: Objection, calls for speculation and
10 vague as to time.

11 THE COURT: Yeah. Objection is sustained.

12 Can you be more specific, Mr. Gillman.

13 BY MR. GILLMAN:

14 Q. During 2012, first half, did JAMD have sufficient
15 income from its rental property to be able to repay its
16 loans?

17 A. Not the loans --

18 MS. MOCK: Objection, vague.

19 THE WITNESS: -- to the family.

20 MS. MOCK: Also vague as to time and as first
21 half.

22 THE COURT: All right.

23 Do you mean the first six months of 2012,
24 Mr. Gillman?

25 MR. GILLMAN: I'd be happy to -- yes --

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1 rephrase.

2 THE COURT: All right. Objection is overruled.

3 MR. GILLMAN: Thank you.

4 BY MR. GILLMAN:

5 Q. During the first six months, did JAMD have the
6 capacity to repay its loans?

7 A. Not the loans to the family members.

8 Q. Well, it repaid some of them, didn't it?

9 A. Yes, but --

10 Q. Didn't it repay yours?

11 A. It borrowed some money from another -- other
12 entities.

13 Q. I see.

14 So it borrowed from the Lois and Jerry Tarkanian
15 trust, the 220,000, correct?

16 A. The Lois and Jerry Tarkanian --

17 Q. I'm sorry. Lois --

18 A. -- Irrevocable Trust.

19 Q. -- and Jerry.

20 And those were deposited into JAMD.

21 A. Yes.

22 Q. And certain other funds were added to it of \$30,000
23 from operational income, correct?

24 A. Yes.

25 Q. And an additional 53,755.83 was obtained from

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1 something called the congressional campaign.

2 What is that?

3 A. I was running for Congress during 2012, and I had
4 lent my campaign money during the primary season, and
5 after I won the primary, the campaign repaid me the
6 money that I had lent it --

7 Q. I take it --

8 A. -- the 53,000.

9 Q. You loaned money for the primary campaign, and then
10 other people donated money to the campaign after you won
11 the primary?

12 A. Yes.

13 Q. And from those funds, you were repaid your loan.

14 A. Yes.

15 Q. And 53,000 of that you directed to go into JAMD,
16 correct?

17 MS. MOCK: Objection, leading.

18 THE COURT: Sustained.

19 THE WITNESS: No, that did not go in -- oh, I'm
20 sorry.

21 BY MR. GILLMAN:

22 Q. Okay. Well, if that went -- that went to you.

23 A. That went into my personal account, yes.

24 Q. Okay. And 50,000 of the initial paydown on the
25 mortgage of 300,000 came from that source.

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1 | A. Yes.

2 MS. MOCK: Objection, leading.

3 THE COURT: Sustained.

4 BY MR. GILLMAN:

5 Q. Utilizing Exhibit P, would you describe the second
6 portion of the transaction for the Court.

7 A. 50,000 of the loan repayment from my congressional
8 campaign went to pay -- it was part of the first paydown
9 on my mortgage.

10 Q. Okay. Could you move on to the second principal
11 reduction, the principal reduction of 50,000.

12 | Where did those funds come from?

13 A. The Tarkanian Basketball Academy had loaned JAMD the
14 \$50,000.

15 | Q. What is Tarkanian Basketball Academy?

16 | A. It is a sports facility that I operate.

17 Q. And I take it it's -- you teach basketball there?

18 A. We -- we have a youth program where we teach young
19 kids how to play basketball, and we also have a lot of
20 people that come in and rent the facility also.

21 Q. Okay. So you rent the space out, and you -- do you
22 charge for the educational opportunities for the young
23 basketball players?

24 A. We have a monthly fee that we charge, and then we --
25 and -- and that's toward the -- the club team. The kids

1 train.

2 Q. And that generates income?

3 A. Yes, it does, and -- and then --

4 Q. And from time to time, has Tarkanian
5 Basketball Academy made loans to other entities?

6 MS. MOCK: Objection, vague as to time.

7 THE COURT: Sustained.

8 BY MR. GILLMAN:

9 Q. Did it during the first half of -- the second half
10 of 2012 make loans to other entities?

11 MS. MOCK: Objection, vague as to other
12 entities.

13 THE COURT: Overruled.

14 THE WITNESS: Yes, it did. It made a \$50,000
15 loan to JAMD.

16 BY MR. GILLMAN:

17 Q. Okay. And where was that deposited?

18 A. Into JAMD's account.

19 Q. And then was that pursuant to exhibits to Exhibit P
20 paid to you on your loan repayment?

21 A. I'm sorry. I didn't quite understand that.

22 Q. All right. What happened to the 50,000 once it was
23 in JAMD for the second paydown?

24 A. It -- it went -- it was a repayment of the loan --
25 the loan to myself, so it went into my personal account.

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1 Q. And then you paid it to Bank of America.

2 A. And then I -- I -- I paid them --

3 MS. MOCK: Objection, leading.

4 BY MR. GILLMAN:

5 Q. That's a second reduction.

6 A. Yes. I made a second payment to Bank of America for
7 that --

8 Q. All right.

9 A. -- \$50,000.

10 Q. And then in August of 2012, did you make a third
11 principal reduction?

12 A. Yes, I did. I --

13 Q. And how did you accomplish that?

14 A. Well, JAMD repaid me another \$50,000, and I used
15 that money to make my final payment on the loan
16 reduction.

17 Q. Now, so the actual reduction of principal was
18 \$398,701.92; is that correct?

19 A. Yes.

20 Q. And you made some calculations at the bottom.

21 Assuming that the county assessor's valuation or
22 your evaluation was correct, you had no equity before
23 these reductions, correct?

24 A. That -- for that -- absolutely no equity. We were
25 upside down several-hundred-thousand dollars.

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1 Q. And after the reduction of principal by \$398,701.92,
2 did you have some equity?

3 A. Yes.

4 According to the valuation of the county assessor's
5 office, we end up having equity of about 93,596 after
6 making a \$400,000 payment.

7 Q. And you got, in essence, an increase in equity of 23
8 percent of what you paid?

9 A. Yes.

10 MS. MOCK: Objection, calls for expert
11 testimony.

12 MR. GILLMAN: No, it doesn't.

13 MS. MOCK: And leading --

14 THE COURT: Overruled.

15 MS. MOCK: -- your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, that's -- that's about what
18 -- the benefit we got from it financially.

19 BY MR. GILLMAN:

20 Q. Why did you make such a lousy investment?

21 A. Because I felt it was more important for me to --
22 and my family to remain in our home after my father's
23 heart attack and aspiration.

24 And I -- I felt it was more important to be able to
25 take care of him, be close to him and my mother because

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1 she's ill also.

2 And, you know, at the time, I had to make a
3 decision. I had a home that was
4 several-hundred-thousand dollars under water.

5 Interest rates at some point were going to go up and
6 make it very difficult for me to make the mortgage
7 payment.

8 So I either had to walk away from the home and
9 needed to give it up in a foreclosure or a short sale or
10 I had to pay down the mortgage, and because of my
11 father's situation, I decided to pay down the mortgage.

12 Q. Did you attempt to refinance the home?

13 A. Yes, I did.

14 Q. Was that because you had a variable-rate mortgage or
15 what reason?

16 A. Yes. I wanted to lock in -- I mean, interest rates
17 are the lowest it's been in my lifetime, and I don't
18 believe it's ever going to be this low again.

19 I -- that was one of the reasons to pay down the
20 mortgage was to get an equity in it so I could refinance
21 it.

22 So I tried to refinance it at the end of 2012, and
23 the mortgage broker told me that because of my tax
24 returns, I had a big loss in 2011, and I couldn't do it,
25 and I had to wait until after I filed my 2012 tax

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1 : returns.
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2 So I tried again in 2012 after my tax returns were
3 filed. I'm sorry, 2013, after my 2012 tax returns were
4 filed.

5 And this time I went to Bank of the West, and they
6 told me I couldn't do it because of the judgment I had
7 against me with this lawsuit.

8 Q. The judgment in favor of the FDIC as receiver?

9 | A. Yes. Yes.

10 Q. So you haven't yet been able to refinance the home.

11	A. No.
----	--------

12 Q. Mr. Tarkanian, would you outline for us what
13 businesses you have management responsibility for.

14 | A. Currently?

15	Q. Current.
----	-------------

16 Well, currently or in the last -- since
17 January 1st, 2012. And if they've changed, indicate the
18 change.

19 A. Okay. There are two family businesses that I am the
20 manager for. One is JAMD, LLC, which I've already
21 discussed.

22 The other is a company called Tark, LLC, which is an
23 8800, approximately, square-foot -- square-foot retail
24 pad in Fresno that we built in 2009.

2.5 And then the third one is the Tarkanian

1 Basketball Academy which I briefly discussed which is a
2 sports facility that I started in 2002 I believe with my
3 brother.

4 Q. And during 2010, did you manage Tarkanian
5 Basketball Academy?

6 A. Yes, I did.. Well, no, I did not, actually.

7 Q. Who took over management during that year?

8 A. In 2009, in 2010, my brother George was running the
9 facility.

10 I was running for the United States Senate and did
11 not have the ability and time to -- to be there to run
12 it, so my brother George was running it.

13 Q. And did at some point in time other members of your
14 family become involved in doing organization of the
15 office or office-related work at the academy?

16 MS. MOCK: Objection, leading. Also vague as
17 to time. Also calls for speculation.

18 THE COURT: Sustained.

19 BY MR. GILLMAN:

20 Q. During 2010, did at some point in time your wife go
21 to work for the Tarkanian Academy?

22 MS. MOCK: Objection, calls for speculation.

23 THE COURT: Overruled.

24 THE WITNESS: Yes.

25 My brother George had been diagnosed with a very

1 serious illness called Faybreeze (phonetic) which was
2 shutting his kidneys down and has forced him now to be
3 on the waiting list for the kidney.

4 So he had to step down from running the facility.
5 His wife was doing the bookkeeping and office. He was
6 running the programs.

7 So at the end of August, we had to make a transition
8 of bringing someone new to run the facility, so we hired
9 a gentleman named Pete Sopolis (phonetic) to come in and
10 do it.

11 My wife came in and helped the transition from
12 George to Pete. She helped him get the office organized
13 and files organized. She did a few other things, too.

14 BY MR. GILLMAN:

15 Q. And was she paid for that?

16 A. Yes, she was.

17 Q. Throughout the history of your management of JAMD,
18 was it necessary for family members including yourself
19 to loan money to JAMD?

20 A. Yes, it --

21 MS. MOCK: Objection, vague as to time. Also
22 calls for speculation:

23 THE COURT: Objection sustained.

24 Can you be more specific, Mr. Gillman.

25 MR. GILLMAN: All right.

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1 BY MR. GILLMAN:

2 Q. When was JAMD formed?

3 A. Well, JAMD, Inc., was formed in early 2000 when we
4 purchased the land, or in 1999 or 2001, something like
5 that.

6 And then for tax purposes it was changed to
7 JAMD, LLC, I believe in 2008.

8 Q. And in 2008, was JAMD in the process of creating a
9 building?

10 A. Yes.

11 Q. And did there become a time in order to meet the
12 building demands of JAMD that it needed money?

13 MS. MOCK: Objection, leading.

14 THE COURT: Overruled.

15 THE WITNESS: Yes, there did.

16 What happened, in --

17 BY MR. GILLMAN:

18 Q. There's no question in front of you, Mr. Tarkanian.

19 What happened?

20 A. The recession hit, and the commercial market in
21 Las Vegas took an incredibly -- incredible dive, and the
22 lenders, at least for us, the lender refused to provide
23 us with any more money to do any more building.

24 So we had had to borrow money from different family
25 members first on the initial construction until we got

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1 the loan.

2 And then in 2007, '08, '09, '10, in that area, we
3 had -- we had to put more money in if we wanted to build
4 additional buildings where we had quality tenants or
5 purchasers.

6 So Building No. 7, which I had mentioned an OB/GYN
7 group bought, we had to pay all cash for that to build
8 it. Nevada State Bank refused to give us the money.

9 So my brother-in-law lent us a little over \$440,000
10 to build that building, and then -- so he had a -- had a
11 loan to JAMD for that amount.

12 And subsequent to that, he needed to get it paid
13 back, so JAMD repaid back the full amount.

14 Building No. 7 -- 6, the drive-thru pad with
15 Winchell's -- Winchell's and Subway, Nevada State Bank
16 would not pay for that, so we paid all cash for that,
17 much of what was my money that I had loaned to JAMD.

18 And -- and -- so -- so anyway: Those were the --
19 and then more recently, Nevada State Bank wouldn't pay
20 for tenant improvements to be done for the most recent
21 tenant we had, so we had to come up with another
22 \$250,000 --

23 MS. MOCK: Your Honor --

24 THE WITNESS: -- to pay for those --

25 MS. MOCK: I'm going to object --

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1 THE WITNESS: -- tenant improvements.

2 MS. MOCK: -- to this hearsay statements about
3 Nevada State Bank and what they did or didn't do.

4 THE COURT: All right. Sustained.

5 BY MR. GILLMAN:

6 Q. You had to come up with additional money, correct,
7 on the leasehold improvements recently?

8 A. I -- our family had to lend -- another family
9 entity, it had to lend JAMD the money to pay for the
10 tenant improvements for our most-recent tenant along
11 with the leasing commissions and the architectural fees.

12 Q. And without the tenant improvements, the tenants
13 didn't want the property.

14 A. They -- they would not have signed a lease. We
15 would have lost a great tenant.

16 Q. Was it JAMD's policy -- did JAMD have a policy
17 regarding repayment of the family-member loans?

18 MS. MOCK: Objection, leading and vague as to
19 time.

20 THE COURT: Sustained.

21 Can you be more specific.

22 MR. GILLMAN: Sure.

23 BY MR. GILLMAN:

24 Q. From 2010 on, I believe that's when the first loan
25 you testified, until --

1 A. No.

2 Q. -- today --

3 A. No.

4 Q. Did JAMD --

5 A. No.

6 Q. -- have a --

7 A. The loans were before that -- the loans were before
8 that.

9 Q. All right.

10 During 2006 -- is that the first loan? Am I
11 correct?

12 A. It was around that area --

13 Q. Okay. During --

14 A. -- of time.

15 Q. -- 2006, did JAMD have a policy regarding repayment
16 of family-member loans?

17 A. Yes.

18 MS. MOCK: Objection, leading.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, it did.

21 BY MR. GILLMAN:

22 Q. What was that policy?

23 A. The policy was that if the money was needed, if the
24 lender needed the money to be repaid back, I was going
25 to do everything I could to get that person the money

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1 back.

2 These were loans family members provided to JAMD to
3 help JAMD get through a very difficult time in which all
4 the family members were beneficiaries of, and it was
5 only fair to get the money back to the lender if they
6 needed the money.

7 One example was my mother --

8 MS. MOCK: Objection to the narrative response,
9 your Honor.

10 THE COURT: Sustained.

11 BY MR. GILLMAN:

12 Q. I want you to state the date as best you recall when
13 the first repayment of JAMD to a family-member loan
14 occurred.

15 Do you recall when that was?

16 A. I -- I don't. There was money that was repaid when
17 it came available in earlier 2000s.

18 In 2000 -- after the 2008 period, the first major
19 repayment was done to Zafi Diamant in -- I believe that
20 was 2009 or early '10.

21 Q. And that's your brother-in-law.

22 A. Yes, it is.

23 Q. And did he express a need to have it repaid?

24 MS. MOCK: Objection, calls for hearsay.

25 THE COURT: Sustained.

1 MR. GILLMAN: The -- all right.

2 BY MR. GILLMAN:

3 Q. Did JAMD follow its policy in connection with that
4 repayment?

5 A. Yes, it did.

6 Q. And did it follow that policy when it repaid you in
7 2012?

8 A. Yes, it did.

9 Q. And has it followed that policy when it repaid loans
10 from other family entities after 2012?

11 A. Yes, and before 2012. The whole time.

12 Q. And before.

13 What loans were repaid by JAMD to other family
14 members after the payment to you?

15 MS. MOCK: Objection, vague as to time.

16 THE COURT: Sustained.

17 MR. GILLMAN: All right.

18 BY MR. GILLMAN:

19 Q. After August of 2012, did JAMD repay any loans to
20 any family members or entity controlled by family
21 members?

22 A. Yes.

23 Q. What entity?

24 A. Well, my mother and father were repaid loans. The
25 Tarkanian Family Limited Partnership I believe was paid

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1 back some loans.

2 I know that the Lois Tarkanian Revokable Trust was
3 repaid back a loan -- loans that it made.

4 The Jerry and Lois Tarkanian Irrevocable Trust was
5 repaid back loans it made.

6 Q. And were all of --

7 A. And there may have been others.

8 Q. And were all of those loans made consistent with the
9 policy of paying back -- of the policy of JAMD?

10 A. Yes.

11 MR. GILLMAN: One moment, your Honor.

12 THE COURT: Okay.

13 (Colloquy not on the record.)

14 MR. GILLMAN: Your Honor, let me double check
15 because this is my foundation witness.

16 Exhibit A through P have all been admitted, correct?

17 THE CLERK: I have them as admitted.

18 THE COURT: I'm sorry?

19 THE CLERK: I have them as admitted.

20 MR. GILLMAN: Thank you --

21 THE CLERK: All of them.

22 MR. GILLMAN: -- your Honor.

23 THE COURT: All right.

24 MR. GILLMAN: I have no further questions at
25 this --

3 THE COURT: All right.

5 THE COURT: All right. Mr. Zirzow?

7 BY MR. ZIRZOW:

9 Since 2010, who in your marriage takes care of the
0 family finances?

12 Q. In what specific respects?

14 My wife has -- had no interest in the finances and
15 has had problems in the past; so I have taken complete
16 control of over payments being made, and books being
17 kept.

19 Is it fair to say that you since 2010 regularly pay
20 all the bills on behalf of the household?

22 Q. Does Amy have any involvement in the payment of the
23 family bills since 2010?

24 A. The only -- I think there was a couple she may have
25 paid to the piano teacher or something to that extent,

25 MS. MOCK: Objection.

1 MR. ZIRZOW: -- to your --

2 MS. MOCK: Calls for speculation as to Amy's
3 state of mind.

4 THE COURT: Sustained.

5 BY MR. ZIRZOW:

6 Q. Did you ever discuss with her the transactions you
7 have testified to?

8 A. The ones from --

9 Q. Well, let me --

10 A. -- Exhibit P?

11 Q. -- rephrase.

12 Prior to the institution of this litigation, did you
13 ever discuss with her the transactions you've previously
14 testified to in front of Mr. Gillman?

15 MS. MOCK: Objection, vague.

16 THE COURT: Sustained.

17 BY MR. ZIRZOW:

18 Q. Prior to the commencement of the FDIC's litigation,
19 did you ever discuss with Amy the loans taken from your
20 parents' revokable trust from the insurance?

21 A. No, I --

22 MS. MOCK: Objection, vague as to time, and
23 there's multiple litigations.

24 THE COURT: Sustained.

25 MR. ZIRZOW: Okay.

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1 BY MR. ZIRZOW:

2 Q. Did you ever discuss with Amy any of the paydowns on
3 the mortgage you've just testified to prior to the
4 institution of the FDIC litigation?

5 A. No, I did not.

6 Q. Did Amy have any involvement in any of the
7 transactions to pay down the mortgage that you've
8 testified to?

9 A. No, she did not.

10 MS. MOCK: Objection, vague as to involvement.

11 THE COURT: Sustained.

12 BY MR. ZIRZOW:

13 Q. Did Amy ever attend any of the family meetings you
14 regularly had where family business was discussed?

15 A. No.

16 Q. Why would she not attend those?

17 A. She --

18 MS. MOCK: Objection, calls for speculation.

19 THE COURT: Sustained.

20 BY MR. ZIRZOW:

21 Q. Did you ever discuss with her why she didn't attend
22 those meetings?

23 A. She had no interest in the meetings. She took care
24 of the kids while we were meeting.

25 MR. ZIRZOW: I have no further questions,

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1 your Honor.

2 THE COURT: Okay.

3 Thank you. All right.

4 Ms. Mock?

5 CROSS-EXAMINATION

6 BY MS. MOCK:

7 Q. Thank you, Mr. Tarkanian.

8 You were just testifying a minute ago about the
9 loans that had been repaid by JAMD pursuant to a policy.

10 Do you remember that?

11 A. To a life-insurance policy?

12 Q. Just loans to JAMD that had been repaid. You've
13 testified that those were repaid to your mom and dad, to
14 the limited partnership, to your mother's irrevocable
15 trust, and your parents' irrevocable trust, right?

16 A. Yes.

17 Q. And those were repaid at the end of 2013, correct?

18 A. They were paid periodically. I was trying to recall
19 which ones were paid at the -- from 2012 on which I
20 thought was the question.

21 Q. Okay. And that would include the ones that were
22 just repaid at the end of 2013, right?

23 A. Yes.

24 Q. And isn't it true that you actually leveraged Tark,
25 one of your family businesses, to a loan of over

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1 \$822,000 which you then funneled back through JAMD and
2 to the trust and ultimately to repay the life-insurance
3 proceeds that you had borrowed for your mortgage; isn't
4 that true?

5 MR. GILLMAN: Objection, your Honor, beyond the
6 scope of direct.

7 MR. ZIRZOW: Object to the form as compound.

8 THE COURT: I'll overrule Mr. Gillman's
9 objection but sustain Mr. Zirzow's.

10 MS. MOCK: Thank you, your Honor.

11 BY MS. MOCK:

12 Q. You took a loan out on the family company called
13 Tark at the end of last year for \$822,000, correct?

14 A. Yes.

15 Q. And you used those funds and gave part of them to
16 JAMD; is that right?

17 A. Yes.

18 Q. You also gave part to your family's irrevocable
19 trust?

20 A. No.

21 MR. GILLMAN: Objection to the form of the
22 question.

23 THE WITNESS: I don't --

24 MR. GILLMAN: Gave infers some kind of gift,
25 and there is no testimony that these --

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1 THE COURT: Sustained.

2 MR. GILLMAN: -- were gifted.

3 THE COURT: Sustained.

4 Can you rephrase it, Ms. Mock.

5 MS. MOCK: Certainly, your Honor.

6 THE COURT: Okay.

7 BY MS. MOCK:

8 Q. Of the proceeds that you received from leveraging
9 Tark, you transferred some of those proceeds to the
10 Tarkanian Basketball Academy, correct?

11 A. The Tarkanian Basketball Academy had a loan to
12 Tark, LLC, and Tark, LLC, repaid the loan.

13 Q. It was a transfer, correct?

14 A. It was a repayment of the loan.

15 Q. Well, you transferred the money to repay the loan;
16 is that right?

17 A. Yes.

18 Q. Okay. And then the money that you transferred to
19 JAMD you then transferred to the Jerry and
20 Lois Tarkanian Irrevocable Trust; is that right?

21 MR. GILLMAN: Objection, your Honor.

22 Transferred from where?

23 Object to the form question. The money --

24 THE COURT: Ms. Mock --

25 MR. GILLMAN: -- that you --

1 THE COURT: Can you be more specific.

2' MS. MOCK: Sure.

3 BY MS. MOCK:

4 Q. Mr. Tarkanian, you ended up taking money out of
5 Tark, and ultimately it was paid back to
6 Phoenix Life Insurance Company to repay the \$220,000 you
7 borrowed to pay down your mortgage, right?

8 MR. ZIRZOW: Object to the form, compound.

9 THE COURT: Sustained.

10 BY MS. MOCK:

11 Q. All right. We'll do this one step at a time.

12 You took money out of Tark the end of last year and
13 transferred it into JAMD, correct?

14 | A. Tark --

15 MR. ZIRZOW: Objection, compound.

16 THE COURT: Sustained.

17 BY MS. MOCK:

18 Q. Did you take an \$822,000 loan in the name of Tark
19 last year, Mr. Tarkanian?

20 A. Tark, LLC, borrowed -- refinanced its property for
21 approximately that amount of money.

22 Q. Okay. When you say Tark, LLC, you're actually
23 talking about your decision on behalf of Tark; isn't
24 that right?

25 A. I am the manager of Tark, LLC, and --

1 Q. Correct.

2 A. Tark, LLC, refinanced the property when it's almost
3 paid off.

4 Q. No one else made that decision but you, right,
5 Mr. Tarkanian?

6 A. I made that decision, yes.

7 Q. All right. You decided to leverage Tark for over
8 \$822,000, correct?

9 A. I decided to refinance the property at historically
10 low rates and get money that came into Tark, LLC, that
11 was not taxable.

12 Q. And --

13 A. It was a very good business move.

14 Q. And you made that decision on your own, correct?

15 A.: Yes, I did.

16 Q. And then you took part of those funds, in fact, a
17 great amount of those funds, and you transferred them to
18 JAMD; is that right?

19 A. Tark, LLC, lent JAMD money as JAMD had lent Tark
20 money when Tark, LLC, was upside down and couldn't pay
21 its bills.

22 Q. And you did that by way of a bank transfer, correct?

23 A. I believe we wrote a check and -- from Tark, LLC, to
24 JAMD, and it was deposited into JAMD's account.

25 | Q. All right.

1 And then the money that Tark deposited into JAMD's
2 account, JAMD then made a transfer back to the Jerry and
3 Lois Tarkanian trust, correct?

4 A. JAMD, LLC, repaid back Lois and Jerry Tarkanian
5 Irrevocable Trust the amount of money it had borrowed
6 previously, not just the money that it had lent for my
7 home but over 200-and-some-thousand dollars that it had
8 lent to JAMD previously to repay my parents to retrofit
9 their home.

10 Q. Okay. And so you did that by way of a transfer from
11 JAMD's account into your parents' irrevocable trust
12 account, correct?

13 A. Yes.

14 Q. Okay. And then your parents' irrevocable trust
15 account took that same money and paid it back to
16 Phoenix Life Insurance company, correct?

17 A. Well, part of it was paid back to Phoenix Home Life.
18 That was the 220,000 that was borrowed to -- lent to
19 JAMD to repay my loan.

20 And then there was another 200-and-some thousand
21 that was paid back to Sun Life which was borrowed from
22 JAMD to lend -- repay my parents back the loan that I
23 borrowed.

24 Q. So the \$220,000 that was paid down on your home
25 mortgage, ultimately, the source of that money that has

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23 A. Well, first, the person who lent the money, if they
24 needed the money, it was my obligation to try to get it
25 back to them if it was at all possible. So that's what

25 A. Yes, it is.

1 Q. And you decided that you needed the money for your
2 mortgage payment, correct?

3 A. With respect to Tark, LLC, no.

4 Q. Or with respect to JAMD, correct?

5 A. No. The loan was refinanced for Tark, LLC, because
6 it was a very smart business decision.

7 Rates are at the lowest levels it's been. I think
8 we got in at low four percent which is almost unheard
9 of, and we were able to receive money from the loan
10 that's not taxable.

11 Almost -- I don't know anybody who develops property
12 and the loan gets paid off that doesn't refinance a
13 property if the interest rates are low.

14 MS. MOCK: I'm going to object and move to
15 strike that as nonresponsive.

16 THE COURT: Overruled.

17 BY MS. MOCK:

18 Q. Mr. Tarkanian, there were no loan instruments that
19 documented the loans that you purportedly gave to JAMD
20 over the years, were there?

21 MR. GILLMAN: Your Honor, objection, asked and
22 answered. We went over this when she called him as a
23 witness.

24 THE COURT: Ms. Mock, I believe you asked the
25 question of whether or not there were any promissory

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1 notes, and I believe the witness' response was that --

2 MS. MOCK: I just wanted --

3 THE COURT: -- he put these on a document --

4 MS. MOCK: -- to confirm that --

5 THE COURT: -- provided to the accountant;
6 isn't that correct?

7 MS. MOCK: Your Honor, I did ask about that. I
8 wanted to make sure that Mr. Tarkanian was not changing
9 his testimony now on direct examination.

10 THE COURT: All right. You may proceed.

11 BY MS. MOCK:

12 Q. Mr. Tarkanian, it's true that there were no loan
13 instruments for the pre-2010 loans that you made to
14 JAMD; is that right?

15 A. I had a promissory note. I can't find it. I
16 couldn't find it.

17 Q. A promissory note?

18 A. Yes.

19 Q. For what amount?

20 A. For the contribution of the loan that I made to
21 JAMD.

22 Q. Do you know how much that was?

23 A. No.

24 Q. Do you know what date that was?

25 A. It was in the early 2000s.

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1 Q. Mr. Tarkanian, I believe you mentioned that you had
2 been borrowing -- or JAMD had been borrowing money from
3 the Tarkanian Basketball Academy, right?

4 A. It did on occasions, yes.

5 Q. What did you do with the \$40,000 amount that the
6 Tarkanian Basketball Academy borrowed from JAMD on
7 June 28th of 2012?

8 A. It lent it to JAMD, and it went into JAMD's account.

9 Q. And then didn't that money go into your account
10 after that?

11 A. It went into the congressional campaign account.

12 Well, it probably went into my account first, yes.

13 Q. Okay. And then you withdrew that same \$40,000 on
14 June 28th of 2012, correct?

15 A. Yes.

16 Q. Have you personally repaid that \$40,000 back to the
17 nonprofit that it came out of?

18 A. I didn't personally borrow it from it. JAMD did,
19 and JAMD has not repaid it back yet.

20 Q. All right. You were talking about the loan to
21 Phoenix.

22 You actually asked for the cash loan on
23 June 3rd, 2012; is that right?

24 A. I believe so.

25 MS. MOCK: All right. Your Honor, may I

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1 approach the witness?

2 THE COURT: Yes, you may.

3 BY MS. MOCK:

4 Q. Mr. Tarkanian --

5 MR. GILLMAN: Your Honor, I --

6 BY MS. MOCK:

7 Q. I've handed you a copy of two letters. They're both
8 dated June 3rd, 2012, addressed to Phoenix Home --

9 A. Excuse me.

10 Q. -- Life.

11 Is this your signature on both of these letters?

12 A. Yes.

13 Q. And do you recognize these letters?

14 MR. GILLMAN: Your Honor, I object to this as
15 duplicative.

16 It's the same letters as attached as Exhibit 1 to P,
17 and to have just more documents is senseless.

18 THE COURT: Objection overruled. All right?

19 MR. GILLMAN: All right.

20 THE WITNESS: What was your question?

21 BY MS. MOCK:

22 Q. I just wanted to confirm that these were, in fact,
23 the letters that you sent to Phoenix Home Life?

24 A. Yes, I believe so.

25 Q. And on each of these you requested a draw of

1 \$110,000 on two separate policies; is that correct?

2 A. Yes.

3 MS. MOCK: Your Honor, we would move to admit
4 these as Creditor Exhibit 33 -- 23 (sic).

5 THE COURT: 23?

6 MR. GILLMAN: Cumulative, objection.

7 It's already admitted as Exhibit 1 to P.

8 THE COURT: All right. Overruled.

9 (Thereupon, Creditor's Exhibit No. 25 was
10 admitted into evidence.)

11 THE WITNESS: Your Honor, we would have to mark
12 that as 25.

13 MS. MOCK: Oh, 25?

14 THE COURT: 25?

15 THE CLERK: Yeah.

16 MS. MOCK: Okay.

17 Thank you.

18 THE COURT: All right.

19 (Colloquy not on the record.)

20 BY MS. MOCK:

21 Q. Mr. Tarkanian, you were talking about the interest
22 rates going back up as of 2012 when you made these
23 transfers.

24 In your experience as a person involved in real
25 estate, did you believe in 2012 that the price or value

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1 of your home would never go up again?

2 A. No, I figured the home would go up in value again.

3 Q. Mr. Tarkanian, as to the loans that are being repaid
4 by JAMD, isn't it true that the loans that you were
5 repaying to yourself in 2012 were actually JAMD salary
6 payments that had been disallowed by the
7 Nevada State Bank?

8 MR. GILLMAN: Objection, compound, because she
9 leads off with the loans from JAMD, and we've got a
10 whole series of them starting in 2006.

11 THE COURT: Sustained.

12 MR. GILLMAN: We --.

13 BY MS. MOCK:

14 Q. Mr. Tarkanian, do you remember having some salary
15 payments from JAMD disallowed by Nevada State Bank in
16 2012?

17 MR. GILLMAN: Objection, beyond the scope of
18 direct.

19 THE COURT: Sustained.

20 BY MS. MOCK:

21 Q. Mr. Tarkanian, didn't you characterize at least two
22 JAMD loan repayments in 2012 -- recharacterized them as
23 loan repayments rather than salary?

24 MR. GILLMAN: Objection, beyond the scope of
25 direct.

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1 THE COURT: Sustained.

2 BY MS. MOCK:

3 Q. Mr. Tarkanian, you were testifying that you were
4 receiving loan repayments from JAMD, correct?

5 A. In 2012?

6 Q. Okay. Yes.

7 A. Yes.

8 Q. All right. And of those loan repayments that you
9 just testified about on direct examination, isn't it
10 true that at least two of those were salary payments
11 from JAMD that --

12 MR. GILLMAN: Object.

13 BY MS. MOCK:

14 Q. -- you recharacterized as a loan because they were
15 disallowed by Nevada State Bank?

16 MR. GILLMAN: Objection, beyond the scope of
17 direct and --

18 THE COURT: Sustained.

19 MR. GILLMAN: -- cumulative.

20 MR. ZIRZOW: Lack of foundation.

21 MS. MOCK: Your Honor, if I may have some
22 leeway.

23 He's just testified at great length about this
24 policy of repaying loans, and we are showing that he was
25 not actually repaying loans.

1 He simply recharacterized salary in a way to get
2 around the problem that he had with Nevada State Bank
3 and --

4 THE COURT: Objection sustained.

5 MS. MOCK: All right.

6 BY MS. MOCK:

7 Q. Have you ever been accused of accounting
8 manipulation, Mr. Tarkanian?

9 MR. ZIRZOW: Objection, vague.

10 THE COURT: Overruled.

11 THE WITNESS: I -- I don't recall if that was
12 something that Sherri put in her E-mail or not.

13 MR. GILLMAN: Objection to --

14 THE WITNESS: I don't -- I don't recall.

15 MR. GILLMAN: -- anything -- a narrative beyond
16 the I don't recall.

17 He's my witness. I know.

18 THE COURT: Objection overruled. It's your
19 witness.

20 MS. MOCK: Your Honor, may I refresh the
21 witness' recollection with --

22 THE COURT: Yes.

23 MS. MOCK: -- a document?

24 THE COURT: Yes, you may.

25 MS. MOCK: Thank you.

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1 THE CLERK: Thank you.

2 (Colloquy not on the record.)

3 BY MS. MOCK:

4 Q. Mr. Tarkanian, I've handed you a copy of a letter
5 addressed to you from Sherri Weaver at Nevada State Bank
6 dated December 11th, 2012.

7 MR. GILLMAN: Objection.

8 She's not refreshing recollection. She's reading
9 from the instrument as if it was admitted, and I object
10 to the instrument.

11 THE COURT: She hasn't read from the instrument
12 yet.

13 | She may ask the question.

14 MR. GILLMAN: She said it was from --

15 MS. MOCK: Thank you, your Honor.

16 MR. GILLMAN: -- and what the date was.

17 THE COURT: The objection --

18 . BY MS. MOCK:

19 Q. Mr. Tarkanian :-

20 THE COURT: -- is overruled.

21 BY MS. MOCK:

22 Q. If you could take a look at this document. It's
23 Bates No. NSB00125 through 00126.

24 Let me know if this refreshes your recollection of
25 Ms. Weaver having accused you of manipulating accounting

1 | practices.

2 | MR. GILLMAN: Objection, hearsay.

3 She is stating the hearsay of Ms. Weaver in this
4 question.

5 THE COURT: Overruled.

6 (Colloquy not on the record.)

7 BY MS. MOCK:

8 Q. Do you recognize this letter, Mr. Tarkanian?

9 A. Yeah, I do recognize it. I don't -- have not seen
10 anywhere in there where you're talking about the
11 manipulation of accounting principles yet.

12 MS. MOCK: All right. First we'd like to move
13 to admit it as Creditor's Exhibit 26.

14 MR. GILLMAN: Objection --

15 THE COURT: All right.

16 MR. GILLMAN: -- relevance.

17 THE COURT: Over --

18 MR. GILLMAN: Objection, beyond the scope of
19 cross-examination -- of direct examination.

20 THE COURT: Overruled.

21 (Thereupon, Creditor's Exhibit No. 26

22 was admitted into evidence.)

23 MS. MOCK: Thank you.

24 BY MS. MOCK:

25 Q. Mr. Tarkanian, looking at the last paragraph of the

1 first page of the letter, let me know when you're there.

2 A. I am there.

3 Q. Beginning with the words JAMD's claim of expenses
4 for attorney's fees of \$7500 per month remains
5 unsubstantiated despite repeated requests from NSB to
6 justify the amount of such fees.

7 Indeed, monthly attorney's fees for projects such as
8 JAMD as an irregular if not an unheard of practice
9 suggesting manipulation of accounting practices, closed
10 quote.

11 Does that refresh your recollection, Mr. Tarkanian,
12 that Nevada State Bank has accused you of manipulating
13 accounting practices with respect to JAMD's finances?

14 MR. GILLMAN: Object to the form of the
15 question.

16 It doesn't say anything about accounting practices
17 or any of the other portions of the question.

18 THE COURT: Overruled.

19 THE WITNESS: The letter state -- the letter
20 states in here their feeling that my retainer fee for
21 attorney fees could possibly be a suggestion -- a
22 manipulation of accounting practices.

23 BY MS. MOCK:

24 Q. Isn't it true, Mr. Tarkanian, that you actually
25 represented then to the bank that you were not going to

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1 take a retainer any longer beginning with the month of
2 October?

3 MS. MOCK: Objection, hearsay. Objection,
4 beyond the scope of direct.

5 THE COURT: Overruled.

6 THE WITNESS: Yes, I -- I wanted to work with
7 the bank and provide itemized statements to them because
8 they requested that.

9 (Colloquy not on the record.)

10 BY MS. MOCK:

11 Q. Isn't it true, Mr. Tarkanian, that rather than take
12 the retainer for the month of October in the amount of
13 \$7500, you actually rolled that money into a payment to
14 Pete Sopolis who is your best friend and property
15 manager that you've described today, and you paid him
16 \$10,000; is that right?

17 MS. MOCK: Objection, your Honor, way beyond
18 the scope of direct and any reasonable inference from
19 it.

20 THE COURT: That objection will be sustained.

21 BY MS. MOCK:

22 Q. Well, Mr. Tarkanian, didn't you tell Sherri Weaver
23 that you decided not to take the retainer for October?

24 A. I don't recall that.

25 MS. MOCK: Your Honor, may I approach the

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1 witness?

2 THE COURT: You may.

3 MR. GILLMAN: Your Honor, I object to any of
4 these documents coming in on a continuing basis.

5 They were never produced. It's total ambush.

6 MS. MOCK: Your Honor, the witness is having
7 the scarce recollection. I am refreshing his
8 recollection with these documents.

9 THE COURT: Objection overruled.

10 THE WITNESS: Okay.

11 BY MS. MOCK:

12 Q. Mr. Tarkanian, this is document -- Bates numbered
13 NSB00078 through 80. It appears to be an E-mail chain
14 dated October 16th, 2012, between you and Ms. Weaver.

15 Do you recall this E-mail chain between you and
16 Ms. Weaver, Mr. Tarkanian?

17 A. I -- I -- I would agree it is. I don't recall
18 specifically this -- this E-mail, but it is --

19 Q. All right.

20 A. -- an E-mail between the two of us.

21 MS. MOCK: Your Honor, we'd move to admit it as
22 Creditors Exhibit No. -- 26?

23 THE CLERK: 7.

24 MR. GILLMAN: Objection --

25 MS. MOCK: 7.

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1 MR. GILLMAN: -- foundation.

2 He said he didn't recall. She's laid no foundation
3 for it.

4 THE COURT: I believe he acknowledges his
5 E-mail, but he just says he doesn't recall it.

6 It will be admitted. The objection is overruled.

7 (Thereupon, Creditor's Exhibit No. 27 was
8 admitted into evidence.)

9 MS. MOCK: Thank you.

10 BY MS. MOCK:

11 Q. Looking at the fourth paragraph on page 7-8, let me
12 know when you're there.

13 A. I'm there.

14 Q. It begins, quote, "Notwithstanding, after your last
15 E-mail, I decided not to take a retainer starting month
16 of October."

17 Do you see that?

18 A. Yes.

19 Q. Isn't it true, Mr. Tarkanian, that in the month of
20 October, JAMD paid Pete Sopolis \$10,000 as a
21 property-management fee?

22 MR. GILLMAN: Objection, beyond the scope of
23 direct.

24 THE COURT: That will be sustained.

25 BY MS. MOCK:

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1 Q. Mr. Tarkanian, isn't it true that JAMD regularly
2 paid Mr. Sopolis in the summer months of 2012
3 approximately \$3,000 per month as a property-management
4 fee?

5 MR. GILLMAN: Objection, beyond the scope of
6 direct.

7 THE COURT: Sustained.

8 BY MS. MOCK:

9 Q. Mr. Tarkanian, isn't it true that you misrepresented
10 to someone else, namely Mrs. Weaver, that you were not
11 going to take a retainer for JAMD when, in fact, you
12 gave the money to Pete Sopolis? Isn't?

13 That true?

14 MR. GILLMAN: Objection, beyond the scope of
15 direct and relevance.

16 THE COURT: Sustained.

17 MS. MOCK: Your Honor, this goes to credibility
18 of the witness.

19 THE COURT: I'll sustain the objection as
20 beyond the scope of direct.

21 BY MS. MOCK:

22 Q. Mr. Tarkanian, you did pay Mr. Sopolis the money
23 that you formerly were taking as a retainer from JAMD;
24 is that right?

25 MR. GILLMAN: Objection, beyond the scope of

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1 direct.

2 THE COURT: Sustained.

3 BY MS. MOCK:

4 Q. Did you take a retainer in October from JAMD,
5 Mr. Tarkanian?

6 A. No. No.

7 Q. Do you know what happened to the money that you were
8 going to take as a retainer?

9 MR. GILLMAN: Objection, beyond the scope of
10 direct.

11 THE COURT: Overruled.

12 THE WITNESS: I believe it's still in JAMD.

13 BY MS. MOCK:

14 Q. Did you increase the salary that you were paying to
15 Pete Sopolis through JAMD in October of 2012?

16 MR. GILLMAN: Objection, beyond the scope of
17 direct.

18 THE COURT: Sustained.

19 MS. MOCK: Your Honor, a little leeway on
20 trying to figure out what's happened to Mr. Tarkanian's
21 money here that's supposedly a loan repayment.

22 THE COURT: The objection was sustained.

23 MS. MOCK: All right.

24 BY MS. MOCK:

25 Q. Isn't it true, Mr. Tarkanian, that you

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22 All of the money that you used to make your mortgage
23 payment in this case where you reduced the JAMD
24 receivable owed to you, all of that money you have
25 characterized as a loan repayment from JAMD to you,

1 right?

2 A. Yes.

3 Q. How much of that loan repayment from JAMD to you was
4 originally a salary payment from JAMD to you?

5 MR. GILLMAN: Objection, beyond the scope of
6 direct.

7 THE COURT: Sustained.

8 BY MS. MOCK:

9 Q. Mr. Tarkanian, was any portion of the money that you
10 paid to your mortgage company money that was actually a
11 salary from JAMD to you rather than a loan repayment as
12 you've told this Court?

13 MR. GILLMAN: Objection, beyond the scope of
14 direct.

15 THE COURT: Sustained.

16 BY MS. MOCK:

17 Q. Mr. Tarkanian, have you submitted any of your
18 expenses, your retainer expenses, to Nevada State Bank
19 recently?

20 MR. GILLMAN: Objection, beyond the scope of
21 direct.

22 THE COURT: Sustained.

23 (Colloquy not on the record.)

24 BY MS. MOCK:

25 Q. You took your father to a Final Four game in Dallas

1 about a month or so ago, didn't you?

2 A. Not the game, no.

3 Q. You put him on a plane and took him to Dallas?

4 A. We went to the coaching convention where the
5 Final Four is held, but we didn't attend the games.

6 Q. Does that mean you put him on a plane and took him
7 to Dallas?

8 A. Yes.

9 Q. You went with him to most of his doctor's
10 appointments, isn't that true, over the last couple of
11 years?

12 A. I went with him to many of them, but I -- actually,
13 I don't think I would have been to the majority of them.
14 I would think my sister Jodi has taken him more than I
15 have.

16 Q. You said you were very close with your father?

17 A. Yes.

18 Q. Did you confer with him about why he closed one of
19 his bank accounts on June the 26th, 2012, in the amount
20 of over \$25,000?

21 MR. GILLMAN: Objection, beyond the scope of
22 direct.

23 THE COURT: Sustained.

24 MS. MOCK: I'm just -- your Honor, a little
25 leeway on the closeness with the family that

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1 Mr. Tarkanian's been discussing.

2 I want to know if he's discussed financial matters
3 with him as well.

4 THE COURT: Sustained. The objection was
5 sustained.

6 BY MS. MOCK:

7 Q. You're actually the trustee of your parents' trust
8 accounts; is that right, Mr. Tarkanian?

9 MR. GILLMAN: Objection, compound.

10 What trust? What accounts?

11 THE COURT: Can you be specific, Ms. Mock.

12 MS. MOCK: Sure.

13 BY MS. MOCK:

14 Q. Are there any trusts that your parents have,
15 Mr. Tarkanian, that you are aware of that you are not
16 the trustee with managerial control of the bank account?

17 A. Yes.

18 Q. What are those?

19 A. The Lois Tarkanian Irrevocable Trust.

20 Q. And your mother's in control of that one?

21 A. Not my mother, somebody my mother is close with.

22 Judy Steel (phonetic) I believe is the name.

23 Q. Any others?

24 A. I am only aware of two others which I am the trustee
25 for.

1 Q. All right.

2 A. Well, I'm not the trustee of the -- of their
3 revokable trust, obviously.

4 There's -- I'm aware of three irrevocable trusts. I
5 am the trustee of two of them.

6 Q. All right. So you are the trustee of two trusts,
7 and you're the manager of all of the family entities
8 that you have described; is that right?

9 A. Yes.

10 MR. GILLMAN: Objection, asked and answered.

11 MS. MOCK: I'll pass the witness.

12 THE COURT: Overruled. All right.

13 (Colloquy not on the record.)

14 THE COURT: Okay. Mr. Gillman?

15 MR. GILLMAN: Your Honor, could we take a
16 break? We've been going straight for an hour and a
17 half.

18 THE COURT: All right. We'll take a ten-minute
19 recess. All right.

20 We'll reconvene at ten minutes after 11:00. All
21 right?

22 THE CLERK: Thank you, your Honor.

23 THE COURT: We're in recess.

24 THE CLERK: All rise.

25 (Court recessed at 11:01:00 a.m.)

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1 A. 10191 Park Run Drive, Suite 200, Las Vegas, Nevada,
2 89145.

3 Q. And what is your education?

4 A. I have an accounting degree and some continuing
5 education for the last 30 years in a variety of
6 accounting tax technical topics.

7 Q. Okay. And what is your work experience?

8 A. I've been a practicing certified public accountant
9 since I was licensed in 1981. So since then I have been
10 practicing.

11 Q. Continuously?

12 A. Yes.

13 Q. Were you at some point in time employed by
14 Daniel Tarkanian and companies he has ownership interest
15 in to provide income tax preparation services?

16 A. I was.

17 Q. Do you remember what year?

18 A. I just thought about that when I was sitting there.
19 I think it was 2007.

20 Q. And have you been providing income-tax-related
21 services, preparation services, tax-return-preparation
22 services since 2007 to Mr. Tarkanian?

23 A. Yes, I have.

24 Q. Have you been providing it to companies he is the
25 manager of?

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1 A. Yes, I have.

2 Q. Do you recall what those companies are?

3 A. It would be J-a-m-d; Tark, LLC; some trusts;
4 Mr. and Mrs. Tarkanian; the Tarkanian family
5 partnership, family limited partnership.

6 Q. Okay. In connection with preparing the tax returns,
7 the income-tax-preparation services you were hired to
8 provide, were you provided records?

9 A. Yes, I was.

10 Q. And did you receive sufficient records and documents
11 from which you could prepare the tax returns for the
12 entities you've just testified about?

13 MS. MOCK: Objection, vague and compound.

14 THE COURT: Sustained.

15 Can you be more specific.

16 MR. GILLMAN: Certainly.

17 BY MR. GILLMAN:

18 Q. Were you provided sufficient documents from which
19 you could prepare Daniel Tarkanian's and Amy Tarkanian's
20 tax return?

21 MS. MOCK: Objection, vague as to time.

22 THE COURT: Can you be more specific as to the
23 time.

24 BY MR. GILLMAN:

25 Q. You were employed you believe in 2007.

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1 Have you prepared the 2007 forward up through 2012
2 tax returns of Daniel Tarkanian and Amy Tarkanian?

3 A. Yes, if -- if 2007 was the correct year.

4 Q. All right.

5 A. But, yes.

6 Q. From whenever you started.

7 A. But, yeah.

8 Q. Maybe it was --

9 A. From when I started --

10 Q. -- 2007.

11 A. Yeah.

12 Q. Were you provided sufficient documents and records
13 from which you could prepare Daniel Tarkanian and
14 Amy Tarkanian's tax returns?

15 MS. MOCK: Objection, vague.

16 THE COURT: Overruled.

17 BY MR. GILLMAN:

18 Q. You may go ahead and --

19 A. Okay.

20 Q. -- answer the question.

21 A. Yes, I was.

22 Q. From whenever you started, 2007, 2008, did you
23 prepare the tax returns for JAMD, LLC, the entity that
24 Mr. Tarkanian is the manager of?

25 A. Yes, I did.

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1 Q. And did you receive sufficient documents and records
2 from Danny for JAMD with which you could use to prepare
3 the tax returns for JAMD, LLC?

4 MS. MOCK: Objection, vague as to time and
5 vague as to records.

6 THE COURT: Overruled.

7 BY MR. GILLMAN:

8 Q. Go ahead and answer.

9 A. Yes. Yes, I did.

10 Q. You were asked to from whenever you started, 2007 or
11 2008 through 2012, to prepare the tax returns for
12 Tark, LLC, correct?

13 A. Yes.

14 Q. And did you receive sufficient documents and records
15 from Danny, Daniel Tarkanian, or Tark to prepare the tax
16 returns for Tark, LLC?

17 MS. MOCK: Objection, leading.

18 THE COURT: Overruled.

19 THE WITNESS: Yes, I did.

20 BY MR. GILLMAN:

21 Q. You were asked to prepare tax returns for -- well,
22 were you asked to prepare tax returns for some of these
23 trusts?

24 A. Yes.

25 Q. And was that during the same time frame, roughly

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1 2007 or 2008 through 2012?

2 A. Yes.

3 Q. Were you provided sufficient documents and records
4 from Mr. Tarkanian or the trusts from which you prepare
5 the tax returns for the trusts?

6 A. Yes, I was.

7 Q. Were you employed either in 2007 or 2008 forward to
8 prepare the tax returns for Tarkanian Basketball
9 Academy?

10 A. Yes, I was..

11 Q. And were you provided sufficient records and
12 documents from which you could prepare the tax returns
13 for Tarkanian Basketball Academy?

14 A. Yes.

15 Q. Have up through 2012 all of the tax returns for
16 Daniel Tarkanian and Amy Tarkanian been filed?

17 A. Yes.

18 Q. Have all of the tax returns for JAMD, LLC, been
19 filed through 2012?

20 A. Yes.

21 Q. Have all of the tax returns for Tark, LLC, been
22 filed through 2012?

23 A. Yes.

24 Q. Have all the tax returns for the trust you were
25 involved with been filed through 2012?

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25	Thank you.
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MR. ZIRZOW: Your Honor, I have no questions of this witness.

And so the Court may notice, I am going to disappear at 11:30. I have an OST in front of Judge Collins (phonetic), but I have no objection to things proceeding.

I did have a closing statement, but I should be back here in five or ten minutes anyway.

THE COURT: All right.

Thank you. Okay.

Ms. Mock.

MS. MOCK: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. MOCK:

Q. Good morning, Mr. Main.

We've met before.

A. Yes.

Q. I'm Janice Mock representing the FDIC.

You were just testifying that you have been working for Danny Tarkanian since 2007; is that right?

A. Yes.

Q. And to your knowledge, are you the only certified public accountant that he uses with regard to his tax returns and financial issues related to himself and the family entities?

25 BY MS. MOCK:

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1 Q. Have you had any conversations with Mr. Tarkanian
2 about his personal financial matters other than
3 preparing his tax return, Mr. Main?

4 A. Not that I can recall. We don't do financial
5 planning or -- I just do the minimum tax prep.

6 Q. Okay. When you're talking about the sufficient
7 documents and records that you testified to, that
8 includes a schedule of loans that Mr. Tarkanian prepared
9 and provided to you; is that right?

10 A. That's correct.

11 Q. And that is a schedule that he prepares that you do
12 not audit; is that right?

13 A. That's correct. We don't audit it.

14 Q. And, in fact, you haven't audited any of the
15 schedules or documents that Mr. Tarkanian has provided
16 to you because that is not your role; is that correct?

17 A. That's correct.

18 Q. Sometimes when you are preparing the tax returns, if
19 you have questions about something that might be in the
20 schedules, you ask Mr. Tarkanian for answers to those
21 questions; is that right?

22 A. That's correct.

23 Q. And you rely on what he tells you in preparing the
24 tax returns; is that correct?

25 | A. Yes.

1 Q. You have never seen any of the so-called loans
2 between the entities that are identified on
3 Mr. Tarkanian's schedule that he provides you, have you?

4 MR. GILLMAN: Objection, beyond the scope of
5 direct and objection to the form of the question.

6 THE COURT: Ms. Mock, what do you mean by
7 seeing --

8 MR. GILLMAN: I didn't --

9 THE COURT: -- the loans?

10 MS. MOCK: I guess with respect to -- let me
11 rephrase, your Honor.

12 THE COURT: All right.

13 Thank you.

14 BY MS. MOCK:

15 Q. With respect to the sufficient documents that you
16 have described for Mr. Gillman --

17 THE COURT: All right.

18 BY MS. MOCK:

19 Q. -- have you ever seen copies of the promissory notes
20 or other loan instruments that document the loans
21 between JAMD and Danny Tarkanian?

22 A. I have not.

23 Q. Okay. In terms of the information and sufficiency
24 of the information provided to you by Mr. Tarkanian, you
25 have never gone beyond the schedule of loans he provides

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1 to determine if, in fact, what is on the schedule was a
2 loan or a gift, have you?

3 A. No.

4 Q. Has Mr. Tarkanian ever asked you to investigate the
5 actual needs of the entities and whether moneys were
6 necessary to be loaned from one to the other?

7 MR. GILLMAN: Objection, beyond the scope of
8 direct.

9 THE COURT: Sustained.

10 BY MS. MOCK:

11 Q. Mr. Main, has Mr. Tarkanian ever asked you to look
12 into any of the entities' financial performance with
13 respect to preparing their tax returns?

14 MR. GILLMAN: Objection, beyond the scope of
15 direct.

16 THE COURT: Overruled.

17 THE WITNESS: No.

18 BY MS. MOCK:

19 Q. With respect to the schedules that Mr. Tarkanian has
20 provided you to prepare tax returns, you are not aware
21 of how much money he or his wife has loaned to JAMD from
22 the inception of JAMD as an entity, are you?

23 A. Well, the loan schedules reflect the -- the loan
24 activity since the inception of the entities and the
25 inception of the practice.

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1 It does have, you know, entries as it relates to the
2 moneys loaned.

3 Q. Okay. And those are entries made by Mr. Tarkanian
4 not by you, correct?

5 A. That's correct.

6 Q. And you rely on those entries for their accuracy as
7 identified by Mr. Tarkanian, correct?

8 A. That's correct.

9 Q. And you don't audit them to determine if they're
10 correct.

11 A. No.

12 MR. GILLMAN: Objection, cumulative. She had
13 previously asked that about auditing.

14 THE COURT: That portion is sustained.

15 BY MS. MOCK:

16 Q. Mr. Main, do you recall preparing some schedules for
17 Mr. Tarkanian for him to provide to this Court attached
18 to his declaration?

19 MR. GILLMAN: Objection, beyond the scope of
20 direct. She could have called him as his (sic) witness.

21 THE COURT: That portion is sustained.

22 BY MS. MOCK:

23 Q. Mr. Main, do you know where the source of funds are
24 that has been provided -- strike that.

25 In preparing the tax returns and relying on the loan

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1 schedules provided to you by Danny Tarkanian, do you
2 know the source of the funds where Mr. Tarkanian
3 provided loans to JAMD?

4 MR. GILLMAN: Objection, beyond the scope of
5 direct. We didn't have him testify about the loans.

6 MS. MOCK: Your Honor, he's testified about the
7 sufficiency of the documents. I'm just asking him how
8 sufficient the documents actually were.

9 THE COURT: The objection will be overruled.

10 THE WITNESS: Would you restate that again.
11 I'm sorry.

12 MS. MOCK: Do you mind, could we have it read
13 back?

14 THE COURT RECORDER: You want me to replay --
15 or find that for you?

16 THE COURT: If you want to find it, that's
17 fine.

18 THE COURT RECORDER: One moment.

19 (Thereupon, recorded testimony was played back at
20 11:32:44 a.m.)

21 BY MS. MOCK:

22 Q. "Mr. Main, do you know where the source of funds are
23 that has been provided -- strike that.

24 In preparing the tax returns and relying on the loan
25 schedules provided to you by Danny Tarkanian, do you

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1 know the source of the funds where Mr. Tarkanian
2 provided loans to JAMD?

3 MR. GILLMAN: Objection, beyond the scope of
4 direct."

5 THE COURT: Yeah.

6 MR. GILLMAN: "We didn't have him testify" --

7 THE COURT: You can stop.

8 MR. GILLMAN: -- "about the loans."

9 THE COURT: Helen, you can stop the --

10 MS. MOCK: "Your Honor, he's testified about
11 the sufficiency of the" --

12 THE COURT: Helen, you can stop there.

13 THE CLERK: Okay.

14 Thank you.

15 THE WITNESS: Okay.

16 MS. MOCK: " -- documents. I am just asking
17 him how sufficient" --

18 (Thereupon, the recorded testimony was stopped
19 at 11:33:22 a.m.)

20 THE COURT: All right.

21 THE WITNESS: I do not.

22 BY MS. MOCK:

23 Q. Have you ever asked?

24 A. No.

25 MS. MOCK: Just one moment, your Honor.

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25 MS. MOCK: Objection, vague as to sufficient

1 documents and as to time.

2 THE COURT: Can you restate, Mr. Gillman.

3 MR. GILLMAN: All right.

4 BY MR. GILLMAN:

5 Q. Let's start with 2009. We know it was after that
6 that you were employed.

7 A. Correct.

8 Q. During 2009, when you were asking to prepare tax
9 returns for JAMD, LLC --

10 A. Correct.

11 Q. -- and you were reflecting loan balances, okay, in
12 the tax returns because of the balance sheet aspects of
13 the tax return, did you ask for sufficient documents and
14 records to justify what was put on the tax returns
15 regarding the loans?

16 MS. MOCK: Objection, leading.

17 THE COURT: Sustained.

18 BY MR. GILLMAN:

19 Q. What did you ask for in order to prepare the tax
20 returns of JAMD, LLC?

21 MS. MOCK: Objection, vague as to time.

22 THE COURT: Are you referring to the return
23 prepared in 2009?

24 MR. GILLMAN: Yeah.

25 Let me rephrase, your Honor.

3 Q. As in the process of preparing the tax return for
4 2009 of JAMD, LLC, what did you ask for in terms of
5 documentation related to loan reflection on the tax
6 return?

12 Just for the record, what we do is we record that
13 activity. So as it would relate to loan activity on the
14 schedule, the Excel schedule, we would see that activity
15 referenced in the bank accounts.

19 Q. Okay.

22 Q. And then you would prepare the tax return for 2009.

24 Q. And 2010, for JAMD, LLC, what process did you go
25 through to prepare the tax returns and reflect the loan

1 balances on those tax returns?

2 A. The same aforementioned activity; bank statements,
3 checkbook, loan-activity schedule, mortgage statements.

4 Q. And you'd cross compare it.

5 A. Correct.

6 Q. All right. For JAMD, LLC, for 2011, what processes
7 did you go through to prepare the tax returns and the
8 loan-related activities reflected in those tax returns
9 for JAMD?

10 MS. MOCK: Objection, compound.

11 THE COURT: Sustained.

12 BY MR. GILLMAN:

13 Q. When you were asked to prepare the 2011 tax return
14 for JAMD, what process did you go through?

15 A. The same aforementioned process.

16 Q. Please outline it for the record.

17 A. It would be receiving the bank statements; the
18 checkbook which would detail the activity, deposits,
19 checks; the loan-activity sheet, Excel sheet from
20 Mr. Tarkanian; and mortgage information from the bank,
21 and we'd do the accounting for the year and reconcile
22 the accounts.

23 Q. Okay. And then you would reflect it in the tax
24 return.

25 A. Correct.

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1 Q. For 2012, what process did you go through to prepare
2 the tax return for JAMD?

3 A. We received the bank statements, and the checkbook,
4 and the loan-activity schedule, and the mortgage
5 statements from the bank for the various mortgages.

6 And we did the bookkeeping for that year and
7 reconciled the accounts and then purported those
8 balances onto the tax return.

9 Q. Okay. For the entity Tark, LLC, during 2009 --
10 let's start there.

11 What process did you go through to prepare its tax
12 return?

13 A. We received the bank statements, the checkbook
14 activity, the loan-reconciliation schedule, mortgage
15 company statements, and a management report from the
16 property management company.

17 Q. And --

18 A. We use -- we use --

19 Q. You used those --

20 A. We recorded the activity to roll forward the
21 balances for preparation of the tax return.

22 Q. And you reflected the loan balances on the tax
23 returns for Tark, LLC, for 2009, correct?

24 A. Correct.

25 Q. For 2010, what processes did you go through to

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1 activity -- and the reason why I hesitate on that, at
2 some time period the books stopped being kept on
3 Quickbooks.

4 So that's the only difference is they changed up the
5 bookkeeping, and at that point in time, we'd actually do
6 the bookkeeping from the checkbooks and the bank
7 statements.

8 We also used the -- reviewed and matched up any loan
9 schedules and then prepared the tax return.

10 Q. So at some point in time, you're not sure what year,
11 Tarkanian Basketball Academy began using a more
12 sophisticated software for its accounting?

13 MS. MOCK: Objection, leading.

14 THE COURT: Sustained.

15 BY MR. GILLMAN:

16 Q. Could you elaborate on what happened to
17 Tarkanian Basketball Academy's accounting system.

18 A. The -- the books stopped being kept on Quickbooks
19 for a period of time, and it's just because they had an
20 accounting transition who was keeping the books had
21 left.

22 Q. I see. Okay. But you went through the same
23 process.

24	A. Correct.
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25 Q. In 2012, did you prepare -- what steps did you take

1 to prepare the Tarkanian Basketball Academy's tax
2 returns?

3 A. I believe that they were back on Quickbooks in 2012,
4 and we would have gotten the bank statements, the
5 Quickbooks reviewed loan activity and prepared the tax
6 return.

7 MR. GILLMAN: Okay. No further questions.

8 THE COURT: Okay.

9 Ms. Mock?

10 MS. MOCK: Thank you, your Honor.

11 RECROSS-EXAMINATION

12 BY MS. MOCK:

13 Q. Mr. Main, just to be clear, you've gone through this
14 process for each one of the entities for each year.

15 Not for any of the years or any of the entities did
16 you ever audit the information provided to determine if
17 it was actually a loan repayment or a gift that was
18 included on the schedules; is that right?

19 A. No. We just used the schedules.

20 Q. All right.

21 And you never did any audit with respect to any cash
22 withdrawals made from any of the bank accounts that you
23 saw, did you?

24 MR. GILLMAN: Objection, cumulative.

25 She's already asked about what he audited, and he

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1 said he didn't audit.

2 MS. MOCK: I'm specifically --

3 THE COURT: Over --

4 MS. MOCK: -- asking about cash withdrawals
5 now, your Honor.

6 THE COURT: Overruled.

7 MS. MOCK: Thank you.

8 BY MS. MOCK:

9 Q. Mr. Main, you never audited any of the cash
10 withdrawals that you saw appear in the bank statements;
11 is that right?

12 A. That's correct.

13 Q. Okay. And, therefore, you don't know where any of
14 the money went that was identified in the bank
15 statements as a cash withdrawal; is that correct?

16 A. That's correct.

17 Q. Okay. And you never did any audit to determine how
18 much of Mr. Tarkanian's income was compensation versus
19 loan repayment; is that correct?

20 A. That's correct.

21 Q. All right.

22 So if Mr. Tarkanian actually received taxable
23 compensation but he listed it as a loan repayment on his
24 schedules, you would not know one way or the other
25 whether that was a correct characterization, would you?

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1 MR. GILLMAN: Objection, beyond the scope of
2 redirect.

3 She's expanding beyond and it should be a narrowing
4 down to what we asked about.

5 MS. MOCK: Your Honor, I'm asking --

6 THE COURT: Overruled.

7 MS. MOCK: -- about the -- thank you.

8 THE COURT: Overruled.

9 THE WITNESS: We -- the characterization of
10 withdrawals was we received from -- from Danny Tarkanian
11 as to whether it was income to him or a loan repayment.

12 BY MS. MOCK:

13 Q. And you didn't do any independent analysis of that
14 yourself; is that right?

15 A. That's correct.

16 Q. Okay. Was the judgment identified on Danny and
17 Amy Tarkanian's tax return for 2012, the judgment
18 against them by the FDIC?

19 MR. GILLMAN: Objection, beyond the scope of
20 direct.

21 THE COURT: Sustained.

22 BY MS. MOCK:

23 Q. Did you prepare Danny and Amy Tarkanian's tax return
24 for 2012?

25 A. We did.

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Q. Did you ever ask Danny Tarkanian what his intentions were in the transfers that you saw from the JAMD account into the Danny and Amy Tarkanian personal account?

1 MR. GILLMAN: Objection, beyond the scope of
2 direct.

3 THE COURT: Sustained.

4 BY MS. MOCK:

5 Q. Mr. Main, did you ever have any conversation with
6 Danny Tarkanian when he was providing you with the
7 documents to prepare his tax return about the intentions
8 that he had with respect to the transfers that you saw
9 in those documents while preparing his tax returns?

10 MR. GILLMAN: Objection, beyond the scope of
11 redirect. We narrow it down.

12 THE COURT: Sustained.

13 MS. MOCK: Your Honor, it goes directly to the
14 tax returns he's testifying about.

15 THE COURT: Sustained.

16 BY MS. MOCK:

17 Q. When you prepared the tax returns for JAMD in 2012,
18 did you have any questions of Mr. Tarkanian concerning
19 the transfers on those returns?

20 MR. GILLMAN: Objection, beyond the scope of
21 direct.

22 THE COURT: You mean redirect?

23 MR. GILLMAN: Redirect. Excuse me.

24 THE COURT: Sustained.

25 BY MS. MOCK:

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THE WITNESS: No.

1 MS. MOCK: Okay.

2 Thank you, your Honor.

3 THE COURT: Okay.

4 MS. MOCK: Pass the witness.

5 THE COURT: All right.

6 Mr. Gillman, anything?

7 Mr. Zirzow?

8 MR. GILLMAN: We have no further questions,
9 your Honor.

10 THE COURT: Okay. Thank you.

11 MR. GILLMAN: The --

12 THE COURT: The witness may step down.

13 THE WITNESS: Thank you.

14 MR. GILLMAN: Danny Tarkanian the debtor rests.

15 THE COURT: All right.

16 Thank you. All right.

17 MR. ZIRZOW: Likewise as to Mrs. Tarkanian.

18 THE COURT: Okay.

19 Thank you. All right.

20 Ms. Mock?

21 MS. MOCK: Your Honor --

22 THE COURT: Do we want to have closing argument
23 or what are the parties' intentions with respect to
24 argument in this matter?

25 Do you want to do post-hearing briefs? Do you want

1 to come back for oral argument? Do you want to take a
2 recess, come back for closing argument?

3 MR. GILLMAN: Your Honor, my request if I'm
4 reading your clock right is --

5 THE COURT: All right.

6 MR. GILLMAN: -- that we come back at
7 1:00 o'clock or sometime after that and --

8 THE COURT: All right.

9 MR. GILLMAN: -- do a closing.

10 THE COURT: You want to do just a normal
11 closing?

12 MS. MOCK: That's fine, your Honor.

13 THE COURT: Any desire --

14 MS. MOCK: Yes, your Honor.

15 THE COURT: -- to do any post-hearing briefs?

16 MR. GILLMAN: No.

17 THE COURT: None?

18 MS. MOCK: That's fine.

19 THE COURT: Okay. All right.

20 So we'll go ahead and be in recess until
21 1:00 o'clock at which time we'll take closing arguments.

22 MS. MOCK: Thank you, your Honor.

23 MR. GILLMAN: Thank you, your Honor.

24 THE COURT: Okay.

25 Thank you.

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1 Court is in recess.

2 THE CLERK: Thank you, your Honor.

3 All rise.

4 (Court recessed at 11:50:44 a.m.)

5 (Court reconvened at 1:04:44 p.m.)

6 THE CLERK: All rise.

7 Court is back in session.

8 THE COURT: Please be seated.

9 We're back on the record in the Daniel and
10 Amy Tarkanian matter.

11 May I have appearances.

12 MR. GILLMAN: Duane Gillman and Tim Cory for
13 Daniel Tarkanian --

14 THE COURT: All right.

15 MR. GILLMAN: -- the debtor.

16 THE COURT: Okay.

17 Thank you.

18 MR. ZIRZOW: Good afternoon, your Honor.

19 Matt Zirzow on behalf of Amy Tarkanian.

20 THE COURT: All right.

21 MS. MOCK: Your Honor, Janice Mock on behalf of
22 the FDIC as receiver for La Jolla Bank.

23 THE COURT: Okay.

24 Thank you, Counsel.

25 This is the agreed time for closing argument to be

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1 presented with respect to the objection brought by the
2 FDIC.

3 Ms. Mock, are you ready to proceed?

4 MS. MOCK: Yes, your Honor.

5 THE COURT: Okay.

6 MS. MOCK: Well, your Honor, at the beginning I
7 said there were two sides to every story. I think
8 undoubtedly in a day and a half of testimony you've
9 heard those.

10 I think there is some truth to both. In fact, I
11 have no doubt that Danny Tarkanian loves his father. I
12 have no doubt that Lois Tarkanian loves her husband or
13 that Jodi loves her father.

14 I think they're all very concerned about his health
15 and his well being, and certainly they should be.

16 What is before the Court, however, is the question
17 of the \$400,000 in mortgage payments that was made in
18 July and August of 2012 shortly after a 14 -- I'm sorry,
19 a \$17,000,000 judgment had been entered against the
20 debtors the preceding May.

21 What this Court has learned is not just about
22 Mr. Tarkanian's health, Jerry Tarkanian's health, but
23 you've also learned about his son, Danny, who is a very
24 shrewd businessman who has been in the business of real
25 estate development and purchase and sale for many, many

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1 years, is the sole manager of many family entities
2 including JAMD, Tark, the Tarkanian Basketball Academy.

3 He acts as the trustee and handles the finances for
4 a couple of his family trusts, and as the Court heard
5 the testimony, the family members basically have relied
6 on him all of these years to make all of the decisions
7 for them.

8 What they're looking for here is an exemption of
9 \$202,000 on their homestead.

10 And the truth of the matter is we can talk about the
11 value of that homestead exemption from now until 5:00
12 o'clock today, but that's really not necessary because
13 but for the \$400,000 in mortgage payments, they would
14 have zero equity in their home to claim.

15 They have never made any principal payments on their
16 home prior to the July and August transfers in 2012 even
17 though they had owned the home since 2005.

18 So some six or seven years they'd actually owned the
19 home and never made a principal payment.

20 As the Court is aware in the Stanton case, it's
21 really all about the timing here.

22 The burden is on the FDIC to prove that the
23 transfers were made with the intent to hinder, delay, or
24 defraud the FDIC and preventing it from collecting its
25 judgment.

1 Proving dubious intent is virtually impossible
2 unless you have someone who admits to it or you have
3 someone who has first hand personal knowledge of the
4 debtor's intent.

5 We don't have that here. What we do have, though,
6 is timing problems for the debtors.

7 At the time of the transactions in question,
8 Mr. Tarkanian, Danny Tarkanian, had a very large account
9 receivable that was owed to him from JAMD and which was
10 within the FDIC's grasp.

11 He had to do something with the money to benefit
12 himself and move it beyond collection range.

13 Putting it in his homestead was a good idea as any
14 especially knowing at the time that he had always
15 intended to stay in that house ever since he bought it,
16 and he knew that the home values would rise again.

17 That transaction occurred just 40 days after the
18 judgment had been entered against him.

19 They are using the elder Tarkanian's medical issues
20 to justify the transfer, and that is a story that is
21 difficult to disprove.

22 The main witnesses for the debtors are
23 Jerry Tarkanian's wife -- Danny Tarkanian's mother --
24 and his sister, Jodi.

25 These are family members who obviously have a good

1 deal of interest in Danny Tarkanian retaining the
2 homestead exemption that he has and certainly in living
3 next door to his father, but I think their testimony is
4 somewhat not credible.

5 For example, when Jodi Diamant testified that even
6 though she ended up being subject to a \$17,000,000
7 judgment and was forced into bankruptcy and lost her
8 home, she continues to insist that she trusts Danny in
9 all things financial even though he never mentioned to
10 her in advance that he was going to draw down the money
11 out of the life-insurance policies from the trust in
12 which she was a beneficiary.

13 In fact, she went so far as to deny under oath that
14 JAMD still even owes her money when that is evidenced on
15 the attachments to Exhibit 1 which is Danny Tarkanian's
16 own declaration showing that he still owes his sister --
17 at least JAMD still owes his sister about \$78,000.

18 Mrs. Tarkanian, Lois Tarkanian, obviously wants her
19 son to remain next door and who wouldn't? She is
20 certainly going to protect him from losing any homestead
21 and also have the benefit of having him next door.

22 But it's important to note that previously she had
23 testified that she did not know about the cash draw on
24 the life-insurance policies in advance and that she
25 would not have approved of it had she known that.

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1 Mrs. Tarkanian, Amy Tarkanian, is the only other
2 family witness that they have put on today, and she
3 claims to know pretty much nothing about anything.

4 She does seem to remember that they discussed making
5 the payment on the house so that Danny could remain near
6 his father, but as the Court saw in her testimony, she
7 remembers or claims to know virtually nothing else.

8 I would suggest that the Court perhaps consider her
9 credibility on these issues given that she was bright
10 enough to take and pass the Nevada Bar to obtain her
11 real estate license, and, yet, she claims --

12 THE COURT: I'm sorry.

13 Did you say the Nevada Bar?

14 MS. MOCK: I'm sorry, the Nevada boards --

15 THE COURT: Okay.

16 Thank you.

17 MS. MOCK: -- to obtain her real estate
18 license, and, yet, she claimed not to even know what a
19 homestead exemption was.

20 She only engaged in two transactions that she could
21 testify to, one of them involving her own home, and,
22 yet, she claimed not to remember anything at all about
23 those transactions or what her role was.

24 She's a licensed realtor or was a licensed realtor.
25 She claimed not to know what the term under water meant.

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1 And, yet, despite her testimony, we also know that
2 she is currently savvy enough to be a political pundit
3 on a local show where she debates senators on ongoing
4 financial matters and other matters of importance to
5 current events.

6 She was the chair of the Nevada Republican Party.
7 She was the board -- on the board of the Clark County
8 Republican Executive Board.

9 So this isn't someone who does not ask questions.
10 In fact, to the contrary, she admits that she is a
11 person who likes to ask questions as she tells her
12 Twitter followers.

13 Yet, she claims to know nothing of the \$400,000
14 transaction or the plan to get the money to pay on the
15 house.

16 Mrs. Tarkanian also has a history of making false
17 statements as witnessed by her lack of credibility in
18 signing the affidavit of financial condition and the
19 personal financial statements that she provided to the
20 FDIC in December of 2011 when she represented that she
21 was aware of all the financial information contained in
22 those affidavits, and, yet, she claimed to know
23 absolutely nothing about them and have nothing to do
24 with the preparation of them.

25 Your Honor, when a witness draws a complete blank on

1 everything except the critical issue in the case, then
2 that witness' credibility is called into doubt.

3 Mr. Tarkanian, of course, testified as one would
4 expect.

5 With respect to the other witnesses, Dr. Miller
6 testified to Jerry Tarkanian's failing health dating
7 back well to 2009; in fact, said that I believe as of
8 2010 that Jerry Tarkanian was a, quote, "time bomb, a
9 walking time bomb."

10 By 2011, Dr. Miller testified -- and you'll find on
11 page 22 of the transcript that Jerry Tarkanian was in a
12 downhill spiral.

13 So I would suggest that this issue of
14 Jerry Tarkanian's heart attack in March of 2012 being
15 the impetus to make these transfers really ignores the
16 fact that Jerry Tarkanian who has been in very, very
17 poor health for quite some time and given that all of
18 the family members knew and Dr. Miller testified that
19 Danny Tarkanian attended the medical visits more than
20 any other family member, certainly Danny Tarkanian could
21 be viewed to have known of his father's failing health
22 condition all these many years and, again, had always
23 intended to stay in this house.

24 It's a question of why did he wait until 2012 after
25 a judgment was entered against him to make even the

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1 first principal payment.

2 Mr. Tarkanian apparently never mentioned his fear of
3 losing his home to his personal accountant who you just
4 heard from today who he's used since 2007. Neither did
5 Mr. Tarkanian mention the fear of losing his home to his
6 own sister, Jodi.

7 There was no immediate need for him to make a
8 \$400,000 payment. He was not in default. The house was
9 not in foreclosure, and the funds that he used to make
10 the payment were just sitting idle and could have been
11 drawn upon at any time.

12 He was current and able to make his mortgage payment
13 which had, as the Court saw in the evidence presented,
14 dropped to almost half the original payment when the
15 five-year change date occurred in August of 2010.

16 Even though the interest payment had dropped, the
17 debtors paid not one penny of principal in seven years
18 up until the time of the July and August transfers.

19 They used the cash value from Danny's life --
20 parents' life-insurance policy which they passed through
21 JAMD calling it a loan, and then the JAMD passed through
22 the money to Danny and Amy calling it a loan repayment,
23 thus, not compromising JAMD's ability to continue its
24 operations as normal.

25 But JAMD did not need a loan from the trust to

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1 continue its operations. It was doing fine.

2 He did the same thing with money from Tark and with
3 money from a nonprofit entity, the Tarkanian
4 Basketball Academy, characterizing this money flow as
5 loans instead of simply writing himself a check from the
6 accounts.

7 In fact, Danny Tarkanian has admitted that it would
8 have been a breach of his fiduciary duty and not a,
9 quote, "reasonable use of nonprofit funds," closed
10 quote, for him to use the academy's money for his own
11 benefit, although he obviously had no problem using the
12 funds once they passed through the JAMD bank account for
13 a couple of days.

14 There was really no reason for him to pay the
15 \$400,000 toward the mortgage on a house that was worth
16 far less at the time he did so.

17 The only possible reason was to extinguish the very
18 large account receivable that JAMD was holding and which
19 was subject to attachment and created instead a JAMD
20 account payable to entities that were not subject to the
21 FDIC's judgment.

22 Danny always had claimed to keep the house from the
23 time he bought it, and as he testified today, he knew
24 that the value of the house would go back up. It was a
25 very safe place for him to put the money that he claimed

1 was owed to him by JAMD.

2 In paragraph 8 of his declaration which is Exhibit 1
3 in this case he says that he engaged in these various
4 transfers after consulting with family members, but he
5 did not.

6 Neither his sister nor his wife testified that they
7 knew anything about the transfers in advance; his wife
8 never and his sister not until long after the fact.

9 Similarly, Mrs. Lois Tarkanian had previously
10 testified that she did not know of the transfers at the
11 time they took place.

12 As with the basketball academy funds,
13 Danny Tarkanian admitted it would be a breach of his
14 fiduciary duty to the family trust to have taken money
15 out of the trust insurance policies and give it to
16 himself.

17 He also testified previously that it would be
18 imprudent and a breach of his duty to take out loans on
19 policies because they have to be paid back with
20 interest.

21 But, again, it was apparently all right for him to
22 use the funds after they passed through the JAMD bank
23 account first and if only for a moment.

24 Danny testified that -- and I'm quoting -- "The only
25 way I could stay in my home," closed quote, was to make

1 the \$400,000 payment. This is clearly not a true
2 statement.

3 He could have continued to make the mortgage
4 payments. He could have set aside the account
5 receivable that JAMD owed to him and used that money to
6 make his mortgage payments.

7 The rates on his home mortgage payment have never
8 increased. He never used cashier's checks before to
9 make a mortgage payment. Why now?

10 If there was nothing nefarious about what he was
11 doing, then why not just simply put the money in his
12 bank account and write a check to Bank of America?
13 There was no explanation for that.

14 There were no promissory notes or loan documents
15 that he's been able to provide that support the
16 so-called loans that he was repaying to himself.

17 We would urge this Court that perhaps they weren't
18 loans at all but either they were gifts from the company
19 or they were simply salary payments that were being
20 recharacterized as loans because Danny Tarkanian had the
21 sole ability to characterize all the money flowing in
22 and out of these accounts.

23 As for being near his family, certainly his sister,
24 Jodi, and his sister, Pam, live within a few minutes of
25 Jerry Tarkanian's home.

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1 There was nothing in 2009 despite the fact that his
2 father had sustained a very serious injury that
3 apparently spurred him at that time to realize that he
4 needed to make some principal payments on his home even
5 though it was just as under water then as it was in 2012
6 or perhaps less so.

7 His sister, Jodi, is a registered nurse. She
8 appears to do a great deal of the caretaking for
9 Mr. Tarkanian.

10 And of course we know that he has caretakers every
11 day in the morning and the evening and that nurses come
12 regularly to visit him.

13 We certainly know that Jerry Tarkanian was well
14 enough just a few weeks ago to attend -- to fly to
15 Dallas for events related to the Final Four basketball
16 tournament.

17 We would suggest to the Court that the issues that
18 came up with Mr. Tarkanian's health in 2012 were not, in
19 fact, the true impetus of making the \$400,000 transfer
20 just after the judgment had been entered.

21 In fact, we know, your Honor, that both of these
22 debtors admit that they never intended to pay the FDIC's
23 judgment against them.

24 He has repaid himself with these loans that he
25 claims, although you'll see in Exhibit 1 to his

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1 declarations the loans that are still outstanding to his
2 siblings have not been paid.

3 He prepares spreadsheets of loans which he gave to
4 his accountant.

5 I'm not sure what Mr. Main's testimony added today
6 other than to underscore the fact that these
7 spreadsheets of loans are not audited. They're not
8 checked, and all Mr. Main does is take Danny's word for
9 what is contained within the spreadsheets.

10 We do know that Danny opened a Wells Fargo Bank
11 account on July the 2nd in the name of the Jerry and
12 Lois Tarkanian Irrevocable Trust, and then just a few
13 days later he used that very account through which he
14 introduced the \$220,000 transfers that he received from
15 the Phoenix Life policies.

16 There was no other activity in the account until the
17 end of 2013 other than these multiple transfers that
18 occurred in July.

19 Furthermore, when asked, Mr. Tarkanian refused to
20 explain why he waited until January of 2013 to even file
21 a homestead exemption on the house that he had owned
22 since 2005.

23 Additionally, neither he nor his accountant
24 Mr. Main -- well, certainly Mr. Tarkanian admitted he
25 never disclosed these loan repayments to

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1 Nevada State Bank who we know regularly monitored the
2 operations of JAMD in order to protect its own
3 \$14,000,000 loan that it holds with respect to JAMD.

4 We know that Mr. Tarkanian is an accomplished
5 business person. He's accomplished in real estate. He
6 has a business degree. He has passed and is a
7 practicing member of the Nevada Bar.

8 The home values that were existing in 2012 were
9 actually better when he made the payment on his house
10 than they were in 2010 when it would have made more
11 sense for him to try to refinance at the time his ARM
12 loan actually rolled over to a new interest rate.

13 What do we know about this? We know that
14 Nevada State Bank has accused him of manipulating
15 accounting practices.

16 And we would suggest to the Court that the Court
17 look carefully into the records that have been presented
18 here and question why things were done in the manner
19 they were done in the most complicated way that they
20 could be done and done just shortly after the judgment
21 had been entered against these debtors.

22 As for the \$202,000 in exemption, just to finish up
23 what we started, it won't really matter to talk about
24 the value because but for these transfers it would be
25 zero.

1 But to the extent that the Court is interested in
2 trying to make a determination as to the value of the
3 exemption, this is something that the trustee will need
4 to be asked to weigh in on because an appraisal needs to
5 be done on the property.

6 As the Court probably knows, the value of the
7 property is determined at the time of the petition date
8 which is not going to be the time that the transfers
9 took place.

10 And, your Honor, if I may just at the end here, I
11 have not utilized whatever electronic facilities that we
12 have, but I have prepared a demonstrative aid that is
13 included a timeline of events based on the testimony
14 that has come in.

15 I would like to share it with the Court and with
16 counsel with your permission.

17 THE COURT: You may.

18 MR. GILLMAN: Objection.

19 THE COURT: What's that?

20 MR. GILLMAN: Well, it's never been introduced.
21 There's no foundation for it.

22 Objection, foundation.

23 THE COURT: Overruled.

24 You may display it.

25 THE CLERK: Thank you.

1 MS. MOCK: And, your Honor, we've prepared the
2 timeline for the Court's convenience based on the
3 evidence that was presented in the day and a half of
4 hearing.

5 Thank you.

6 THE COURT: Okay.

7 MR. GILLMAN: May it please the Court, there
8 are three points I want to emphasize, and they're,
9 frankly, the three things I told this Court would happen
10 in the evidence to be presented in my opening comments,
11 my opening statement.

12 First, there is no proof of the intent of either
13 debtor to hinder, delay, or defraud the FDIC or any
14 other creditor. Frankly, it doesn't exist on the
15 evidence in this case.

16 Second, there is no underlying fraudulent act or
17 tortious act giving rise to a denial of discharge under
18 Nevada state law.

19 The Meckie (phonetic) versus Chong (phonetic)
20 decision which is cited in the objection and cited in
21 the --

22 THE COURT: I'm sorry.

23 MR. GILLMAN: -- FDIC's --

24 THE COURT: Did you say denial of --

25 MR. GILLMAN: -- trial brief --

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1 THE COURT: Did you say denial of a discharge?

2 MR. GILLMAN: Excuse me.

3 Denial of homestead exemption.

4 THE COURT: I see. Okay.

5 MR. GILLMAN: There has to have been a
6 fraudulent act to acquire the money or other property
7 that puts into the home in order to qualify for that.
8 There's none of that. There's no evidence of that.

9 And, thirdly, there is a failure of the FDIC to
10 prove an increase in homestead exemption attributable to
11 disposition of nonexempt assets, one of the required
12 elements that must be shown for the 522(o) analysis
13 primarily under the Stanton decision.

14 And let me go through the evidence and work these
15 three points from the beginning.

16 First, this is an extraordinarily close father and
17 son. That's what dominates here. That's what matters.

18 It was the heart attack of the father that triggered
19 the concern for caring for his father through the wall,
20 through the connection between the two houses, and
21 triggered the paydowns as set forth in Exhibit P. That
22 is totally consistent with all of the witnesses.

23 FDIC has sent out, Oh, I don't know, eight or ten
24 2004 subpoenas, has conducted depositions and 2004
25 exams, has I guess a half dozen of them.

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1 And they can't come up with a witness that's
2 inconsistent with all the family's testimony about the
3 closeness of the family and the triggering event being
4 the heart attack.

5 That's the evidence in front of the Court, and it's
6 in stark contrast with the Stanton case that they cite
7 and the traditional fraudulent-conveyance case going all
8 the way back to Twines' (phonetic) case, a 1601 decision
9 which first interpreted the first interpretation of the
10 Statute of Elizabeth of 1571 on the
11 fraudulent-conveyance statute as it started.

12 In Twines and Stanton, there was no explanation by
13 the debtor as to why they did it.

14 Twines had no explanation as to why he held in trust
15 the goods of Pierce (phonetic) to the detriment of C
16 (phonetic), the creditor. Same in Stanton. She had no
17 explanation.

18 Here, this debtor through the witnesses, the only
19 witnesses that came forward, gave the explanation of why
20 these transfers were made, and it's perfectly consistent
21 throughout.

22 They were made because of the heart attack. They
23 were made after the heart attack in order to put him in
24 a position where he could refinance the house.

25 You get it down to an 80 percent value to refinance

1 and not have hanging over his head the risk of the
2 interest rate going up to where he could not sustain it.

3 He was not doing it, under the evidence in front of
4 the Court, to defraud the FDIC who waited until
5 April 19th of 2013 as set forth in Exhibit M to even
6 register its judgment.

7 Now, Ms. Mock switches gears back and forth trying
8 to manipulate what evidence came out. At one point she
9 says, oh, you paid down the receivable that was owed to
10 yourself by JAMD.

11 At another point she says, oh, there was no
12 receivable; it was some sort of manipulation of the
13 affairs of some unnamed in the pleading creditor,
14 Nevada State Bank, but we have no evidence on that, so
15 I'm not going to address it.

16 But it shows their lack of consistent evidence
17 supporting an actual intent to defraud in this case.
18 Okay?

19 As to the second I'll call it the Stanton page 13
20 necessary element of increasing homestead caused by
21 disposition of nonexempt assets.

22 As Exhibit P shows that but for the \$220,000 of
23 funds from the asset of the irrevocable trust, assets
24 which were not available to the FDIC or any other
25 creditor, judgment or otherwise, of the debtors, their

1 increase in value of the property, the increase in
2 homestead caused by the transfer of \$93,596.67 would not
3 have occurred.

4 The second element of the 522(o) under the Stanton
5 analysis and the second element of the statute the FDIC
6 has failed to support with adequate evidence, and
7 Exhibit P proves that.

8 You can -- I hope you don't. I hope you will hold
9 that the second element was not met and that there has
10 been no showing of actual intent to defraud, delay, or
11 hinder a creditor, but you certainly could rule just on
12 the second element and deny this objection based upon
13 it.

14 The third point I wanted to make which is the Meckie
15 versus Chong state-court pleading or argument raised in
16 the original objection and in the trial brief is that
17 there is no evidence that either Mr. or Mrs. Tarkanian
18 did an improper withdrawal of funds from La Jolla Bank
19 or any other bad act constituting a state-court
20 fraudulent act or state-court tort.

21 Hence, since there is no tort and there is no
22 improper fraudulent act, the homestead exemption under
23 Nevada law standing alone is allowed.

24 In summary, your Honor, the FDIC has failed to meet
25 its burden of proof and failed to prove that there was

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1 intent to hinder, delay, or defraud any creditor in that
2 it failed to meet the second element necessary for
3 522(o), namely, an increase in homestead caused by the
4 disposition of nonexempt assets and, third, to prove any
5 fraudulent act or tortious behavior giving rise to a
6 denial of homestead exemptions under Nevada state law.

7 Does the Court have any questions of me?

8 THE COURT: No, I don't. All right.

9 Mr. Zirzow?

10 MR. ZIRZOW: Your Honor, I would certainly join
11 in Mr. Gillman's comments, and I do have some points of
12 my own as well.

13 First of all, your Honor, and this is somewhat of an
14 echo of what I stated to you in my opening statement and
15 that is before getting to the meat of the matter or the
16 substance before your Honor today, I would like to talk
17 about the proper and correct scope of what is actually
18 before the Court today in this contested matter, this
19 objection to the homestead.

20 And as I indicated in my opening statement and as I
21 would like to reiterate, the FDIC apparently seeks to
22 challenge all 400,000-some-odd dollars in alleged
23 transfers, and that is not actually the proper scope of
24 what is before the Court today.

25 To be clear, 522(o), which is very similar if not

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1 the same at least in Nevada to any state-law-imposed
2 limitations on a homestead exemption, all that 522
3 allows for and -- to limit is the extent of the debtor's
4 interest in the property.

5 And that has been interpreted by Courts cited in my
6 trial brief as the extent of the exemption, the
7 exemptible amount only.

8 So we're not here today -- 522(o), in other words,
9 is not some general avoidance power.

10 We're not going after the entirety of the alleged
11 transfers because it's undisputed that the debtors
12 originally had negative equity in their residence.

13 Rather, 522(o) only goes towards the limit of the
14 exemption amount.

15 The second important scope item I'd like to discuss
16 with the Court is -- and I'm sorry.

17 There's the Wilicut (phonetic) case that I cited to
18 you in my opening statement, Wilicut, 472 B.R. 88. It's
19 an Eighth Circuit decision from the BAP.

20 BAP Eighth Circuit decision in 2012, stands for that
21 proposition that you only look to the exemptible amount
22 and that 522(o) only limits the exemptible amount of the
23 exemption.

24 So all we're dealing with is how much of the
25 exemption is allowed not any transfer or recovery or

25 Now, on behalf of Ms. Tarkanian at least, I would

1 admit that she has made an admission in her Schedule C
2 as to the validity and amount of her exemption, and
3 there is no evidence to counter that even attempted to
4 be introduced by the FDIC.

5 Rather, Ms. Mock is doing again in her closing
6 statement what she tried to do in her opening which is
7 leave the door open to allow additional evidence at some
8 undefined later date of which I am uncertain when
9 exactly that would be resolved.

10 And the Court will recall I took significant issue
11 with that in my opening statement, and I still do. I
12 said, no, no, no, absolutely not. We are here today on
13 all matters related to the homestead exemption. You
14 cannot back in later or get additional evidence in as to
15 amount.

16 The FDIC in its proceedings and this contested
17 matter has not introduced an appraisal, has not
18 introduced any evidence of valuation, has not introduced
19 any evidence that the exemption amount itself was
20 improperly claimed, and it, indeed, is as with all
21 elements of the claim its burden of proof before you
22 today, your Honor.

23 The result is, in essence, your Honor, that the
24 amount of the exemption -- to the extent you allow it is
25 another issue. I'll give you that.

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1 But the actual amount of the exemption is
2 unchallenged before you today. So it is what it is on
3 the debtor's schedules to the extent it is allowed.
4 There is no further proceeding after the close of
5 evidence regarding the amount of the exemption.

6 Now that we've gotten those preliminary scope issues
7 out of the way, I'd like to get into the actual heart of
8 the dispute.

9 And as your Honor is well aware from the trial
10 briefs, 522(o) and the related state court -- excuse me,
11 state case law, at least in Nevada, with respect to the
12 denial or limitation of a homestead, looks, generally
13 speaking, to the badges of fraud commonly employed in a
14 variety of contexts in bankruptcy cases whether in the
15 fraudulent-transfer context; the 522(o) context, which
16 is what we're here on today; or otherwise.

17 And critically, your Honor, as stated in my trial
18 brief, the case law requires something more than mere
19 exemption planning because that fact standing alone by
20 itself is not fraudulent or in bad faith standing by
21 itself.

22 After all, exemptions are made available. They're
23 there to be used, and that something more is something
24 in addition to a raw allegation of exemption planning is
25 noticeably absent in this case.

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1 Now, what the FDIC tries to argue, it tries to jump
2 to the conclusion.

3 It says given the judgment we obtained and the
4 actions of the debtors, the actions of the debtors had
5 to have been in reaction to that. It's almost per se
6 fraudulent is the FDIC's argument to you.

7 That there were just -- there's just no other
8 possibility the debtors could have possibly had pulsing
9 through their minds at the time that they engaged in
10 these transactions.

11 It's almost like a per se rule that the FDIC is
12 articulating as if the debtor had no other thoughts or
13 concerns in their life other than their judgment.

14 Now, once that judgment was entered, in the FDIC's
15 mind, apparently, their argument is that the only
16 possible sole motivating factor for apparently just
17 about everything the debtors did in their lives
18 thereafter had to be attributable to that judgment.

19 Well, your Honor, the world doesn't stop once the
20 FDIC gets a judgment, and, indeed, neither did the FDIC.
21 The FDIC waited almost a year after obtaining the
22 judgment to seek its enforcement.

23 You know, what we've seen in this case, your Honor,
24 is there are numerous problems with the FDIC's theory --
25 FDIC's theory here, and I think most telling is what

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1 Ms. Mock admitted in her closing statement.

2 She said JAMD could have just made the loan -- or
3 the payments on the mortgage directly. Well, then, why
4 are we here? What's the difference if they ran them
5 through the accounts?

6 In fact, what Mr. Tarkanian did was probably --
7 well, it was more proper to properly account for the
8 transfers as he did.

9 So what's the difference if JAMD, as she has now
10 admitted in her closing statement, could have paid the
11 mortgage payments directly?

12 All Mr. Tarkanian did was properly account for them
13 by doing this series of what she calls complex
14 transactions...

15 One person's complex transactions is another
16 person's way to properly account for interrelated loans
17 among entities. That's all that was really going on
18 here.

19 Now, with respect to the actual evidence, there is
20 no general evidence of an intent to fraud or conceal
21 anything. There is no evidence that the debtors
22 absconded with anything.

23 You know, this intimation that certain family
24 members weren't aware of things, so what? They
25 implicitly trusted each other.

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1 You heard testimony regarding that and that they
2 held regular family meetings, that they deferred to
3 Danny because he was principally in charge of the
4 entities, and they implicitly trusted him.

5 That's what the testimony was not that they were
6 absconding or hiding or not disclosing matters.

7 This collateral fight about what was said to NSB,
8 your Honor, you don't have any of the Nevada State Bank
9 loan documents in front of you. You have no foundation
10 for what those loan documents actually required as far
11 as reporting.

12 You have some very bare testimony and some attempts
13 to introduce some E-mails with respect to whatever those
14 loan documents allegedly required.. That's all you have
15 with respect to that.

16 I'm not sure how you could properly even draw a
17 conclusion as to whether Nevada State Bank was even
18 properly articulating the loan requirements.

19 Secondly, your Honor, the evidence as shown and as,
20 indeed, Mr. Gillman has discussed at length in his
21 closing remarks was that there was very clearly
22 something -- another significant motivating factor for
23 having made the transfers from the parents' life
24 insurance to pay down the house and that is, obviously
25 that he wanted to remain close to his parents' house in

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1 order to look after them.

2 Now, evidence that his parents who are obviously
3 very famous and well known are ailing. Mr. Tarkanian is
4 obviously a famous basketball coach from UNLV.
5 Mrs. Tarkanian is a city councilwoman for Ward 1.

6 You know, it wasn't just a matter of staying close.
7 I mean, I've never seen such an attachment as a physical
8 walkway with property purchased and specifically walled
9 off to expedite the ability to go between the houses.

10 I mean, I'm not sure what more of a close connection
11 there could be, indeed, in this case than a physical --
12 I'm sorry, a physical pathway to allow for expeditious
13 transit between the houses in order to allow him to
14 check on his father multiple times a day.

15 Thirdly, your Honor, you also heard about, frankly,
16 the cold, hard economics of the transactions were not
17 necessarily in the debtor's best interest.

18 You know, we tend to think that a debtor -- if a
19 debtor's going to do something wrong, they're going to
20 avail themselves of the maximum way they can do that.

21 Here you had a decision that resulted in about a
22 20-percent equity cushion after all is said and done,
23 and I think less than half of the money the transactions
24 that were allegedly engaged in resulted in that.

25 So you have a significant paydown of negative equity

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1 on a house.

2 You know, I would tend to think that if
3 Mr. Tarkanian were so motivated, he would have tried to
4 put money into a retirement account or some other of the
5 many exemptions he has not availed himself of in the
6 bankruptcy case to get 100 cents on the dollar bang for
7 your buck true value in maximizing an exemption as
8 opposed to plowing it into a homestead where he got less
9 than half of the realizable value in the exemption he is
10 now claiming.

11 You know, those kind of facts taken together, the
12 totality of the circumstances speak volumes as to the
13 true intent here, that there was a lot more going on
14 than the FDIC's self focus on the entry of a judgment.

15 There clearly were other things, other significant
16 motivating factors that the world doesn't stop when
17 someone gets a judgment against you.

18 In the ordinary course, you can continue as these
19 entities, and you heard testimony that they did engage
20 in a policy practice and pattern of repayment and the
21 fact that the economics of the transaction on their face
22 didn't make sense.

23 You know, if Danny really wanted to put money out of
24 the reach of the FDIC, there are many better ways he
25 could have gone about it.

1 And all the testimony about him being a
2 sophisticated person and he is a lawyer, he is not a
3 bankruptcy attorney. He's certainly not an exemption or
4 an asset-protection specialist. He's barely practiced
5 law.

6 But, with all due respect, you know, if he's that
7 sophisticated, if he's that smart, your Honor, if he's
8 that savvy, then there are certainly much better ways he
9 could have availed himself of many other available
10 exemptions than what he actually did in this case.

11 Your Honor, I did reference for you in my opening
12 statement and I would like to again repeat it,
13 Judge Collins' recent decision in the Aarons case
14 506 B.R. 516, Bankruptcy District -- Northern District
15 of Iowa, March 4th of 2014. Ironically enough, it has
16 very similar facts to the case at hand.

17 In that case, your Honor, the debtors cashed in a
18 life-insurance policy which was exempt under state law
19 and invested the money into their homestead.

20 And the debtors admitted that the purpose of the
21 transfer was to maximize the value of their exemption,
22 and, indeed, they did it shortly before they filed for
23 bankruptcy in much closer proximity than Mr. Tarkanian
24 did in the case at hand.

25 And, of course, the issue in that case as it is in

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25 And when I say global, your Honor, I mean he looked

1 at the entirety and the totality of the situation which
2 I think is so critical in this case.

3 To look at not as the FDIC apparently likes to have
4 you do to look at specific transactions but look at the
5 entirety of it and see what was actually going on here.

6 You know, maybe this debtor in Mr. Tarkanian's case
7 could have done his exemption planning better such as
8 have JAMD pay his house -- his mortgage directly, but
9 overall what he was trying to do, Mr. Tarkanian, was
10 maximize the value of his homestead exemption.

11 And I think that consideration should weigh heavily
12 on the Court, this idea that you look at the totality of
13 what was actually going on, looking at the entirety of
14 the transaction not just focusing on the specific parts
15 but globally.

16 Because when we look at globally, the entirety of
17 the protected purpose that was going on here comes into
18 clear focus and was eminently proper.

19 Lastly, with respect to Ms. Tarkanian's issues,
20 specifically, the evidence has shown that she had no
21 involvement or, indeed, any knowledge of the transfers
22 made by Mr. Tarkanian.

23 She has a homestead available to her just as her
24 husband does.

25 I appreciate it is well-established that there are

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1 technically two separate homestead exemptions, that you
2 cannot -- there's no stacking like there are with
3 respect to other exemptions.

4 But similar to an innocent-spouse defense in the
5 taxpayer context, even if all else fails, Ms. Tarkanian
6 is at least entitled under the Judge George's decision
7 in American Business Machines to some equitable,
8 undivided one-half interest in the homestead.

9 And, your Honor, this is principally why I was
10 brought into the case. I probably overstayed my time up
11 here before your Honor.

12 I join in Mr. Gillman's comments, but I do think I
13 need to make a point of this separate equitable remedy
14 Ms. Tarkanian has in the event that the exemption is
15 limited under 522 or applicable state law.

16 And then, finally, your Honor, with respect to
17 Ms. Mock's attempts to attack the credibility of
18 Ms. Tarkanian, yes, she is a political pundit, a
19 political talking head on the local news.

20 My recollection of her testimony is different than
21 Ms. Mock's. Ms. Mock stated in her closing that she
22 regularly speaks about, quote, "financial matters." I
23 don't remember any testimony in that regard, your Honor.

24 Secondly, that she may have used her real estate
25 license for one or two transactions involving herself

1 personally to save on real estate commissions does not
2 make her a financial maven or suddenly have full
3 knowledge of all of the family finances.

4 The testimony has been consistent throughout and
5 that she may have allowed her real estate license to be
6 used to buy the house and to allow for a transaction of
7 family property to save on real estate costs and closing
8 costs does not suddenly transform her into a know-all
9 be-all of real estate or, in particular, the mortgage
10 payments with respect to the Campbell property.

11 So looking at the credibility, ultimately, in spite
12 of the best attempts to try and paint Ms. Tarkanian as
13 just a homemaker, God forbid, she did not take,
14 participate, she did not have participation in whatever
15 the alleged transactions were that transpired.

16 And I think she is entitled, if all else fails, to
17 at least some equity consideration to preserve her
18 ability to claim a homestead as well.

19 Does your Honor have any questions for me?

20 THE COURT: NO, I don't.

21 Thank you.

22 MR. ZIRZOW: Thank you.

23 THE COURT: All right. Ms. Mock, close?

24 MS. MOCK: Yes, your Honor, just briefly.

25 I'll start on the point that Mr. Zirzow finished on

25 It's not hard math, your Honor. If they put in

1 400,000 and they're asking for a \$202,000 exemption, if
2 the Court rules in favor of the FDIC here, their
3 exemption is going to be reduced to zero.

4 They would be left with an exemption only if they
5 had a value of over \$400,000 at this point because they
6 have never made another principal payment, and they had
7 no equity until they transferred the money in July and
8 August of 2002.

9 So they are not entitled to the \$202,000 of
10 exemption that they're asking for.

11 On this issue of ~~JAMD~~ could have repaid -- or could
12 have paid the mortgage itself, I did say that in
13 argument.

14 And I will say that that probably could have been
15 done by Mr. Tarkanian because he signs the checks on the
16 bank accounts, and he can do whatever he wants,
17 apparently, with all of these different entities and
18 their money.

19 But if he had simply had JAMD pay his mortgage
20 payment directly, that would have then created another
21 debt that he owed to JAMD likely that would be
22 dischargeable.

23 And then he would have to be answering to JAMD as to
24 why it couldn't repay the debt that he had loaned money
25 to himself in bankruptcy case.

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1 And he probably didn't want to set up that
2 situation, assuming that he were even thinking about
3 bankruptcy in July and August of 2012 and considering he
4 didn't file for bankruptcy until December of 2013, about
5 a year and a half later which again runs contrary to
6 Mr. Zirzow's argument about maximizing their exemption.

7 The only thing that had happened in terms of timing
8 other than the issue of Mr. Tarkanian's continuing ill
9 health is that the judgment had been entered against
10 them.

11 Mr. Gillman wants to ignore the fact that all of the
12 money went through JAMD. He's been talking about the
13 transfer of an exempt asset into an exempt asset.

14 And he's ignoring the fact completely that the money
15 did not go from the insurance policy to Bank of America.
16 It didn't even go from an insurance policy into
17 Danny and Amy Tarkanian's pocketbook.

18 It went from an insurance policy into a family
19 trust, and then Mr. Tarkanian himself set it up this
20 way, and he's been very deliberate to call this a loan
21 made by the trust to JAMD so that JAMD could meet its
22 obligations to him.

23 They cannot now have it both ways. Either it was an
24 account receivable that was subject to attachment by the
25 FDIC or it was not.

1 And I think now he can't go back on everything that
2 he has testified to and what the evidence shows which is
3 he considered this a direct repayment of a loan from
4 JAMD that he claims to have made at a much earlier time.

5 Your Honor, one other thing, I didn't introduce this
6 before, but I had actually made based on the evidence
7 that is presented another demonstrative for the Court
8 showing the transactions that are at issue.

9 And I would be happy to present that to the Court if
10 the Court is willing to accept a demonstrative based on
11 the evidence.

12 THE COURT: Well, I think I already have
13 Exhibit P that was admitted into evidence. I think I
14 know the sequence of the transactions, so --

15 MS. MOCK: It's different than Exhibit P,
16 your Honor, if that makes any difference to you.

17 THE COURT: It doesn't make any difference.

18 MS. MOCK: All right.

19 THE COURT: I don't need it.

20 MS. MOCK: And, finally, I would say -- I was
21 looking at the Stanton case to see what excuse the
22 debtor had given there for the transfers that were made
23 in that case because I did not have the recall that
24 Mr. Gillman did that the debtor didn't provide any
25 reason.

1 I'm looking at page 95 of the Stanton case,
2 457 B.R. 80, 2011,, and the Court writes Stanton
3 countered that she simply was doing what any prudent
4 investor would have done under the economic climate of
5 late 2008 liquidating assets into cash and reducing
6 debt.

7 And in that case, the Court found that her
8 justifications, quote, "have an eely (phonetic) ad hoc
9 feel to them.

10 Her demeanor on the witness stand did not convey any
11 impression that the transactions in late 2008 were
12 anything but moves of a debtor desperate to keep control
13 of her assets for her immediate family and selected
14 creditors."

15 So, your Honor, with that, we would ask that the
16 Court sustain the FDIC's objection to the claimed
17 homestead exemption that the debtors are seeking in this
18 matter.

19 THE COURT: Okay.

20 Thank you. All right.

21 Counsel, what is the current state of this
22 proceeding? When are the next proceedings before the
23 Court scheduled?

24 MS. MOCK: Your Honor, I believe the next thing
25 that we have on the calendar for --

1 THE COURT: All right.

2 MS. MOCK: -- this matter --

3 THE COURT: Okay.

4 MS. MOCK: -- is the June 23rd deadline to
5 object to discharge.

6 THE COURT: I see. Okay.

7 Is there --

8 MS. MOCK: I'm not aware --

9 THE COURT: -- anything else?

10 MS. MOCK: -- of anything else.

11 THE COURT: All right. I --

12 MS. MOCK: Mr. Gillman?

13 THE COURT: I believe -- did the parties
14 complete the 2004 exams that were being debated at the
15 last hearing?

16 MS. MOCK: We did, your Honor.

17 MR. GILLMAN: Yes, we did, your Honor.

18 THE COURT: All right.

19 MS. MOCK: We completed them last week.

20 THE COURT: Okay. All right.

21 Well, what the Court is going to do is I'm going to
22 issue a written decision with respect to this matter.

23 I take it from Mr. Gillman when you refer to someone
24 in the Tenth Circuit perhaps reading this on an appeal
25 you meant the Ninth Circuit; is that right?

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1 MR. GILLMAN: I'm sorry, your Honor. I have
2 that -- I make that mistake a lot both places.

3 THE COURT: No, I under --

4 MR. GILLMAN: I don't just discriminate against
5 the Ninth Circuit.

6 THE COURT: No, I understand --

7 MR. GILLMAN: I --

8 THE COURT: -- that.

9 But it's my intention to simply issue a written
10 decision.

11 I hope, unless there is some inconvenient Chapter 11
12 or something massive that Mr. Zirzow's office files that
13 ends up in front of me, I hope I'll have time to get
14 this order out by next week --

15 MR. GILLMAN: Thank you, your Honor.

16 THE COURT: -- because I understand this is a
17 very serious issue to the debtors' family, and they want
18 a decision on this quickly, so that's my intention.

19 So as of now, I'm going to take this matter under
20 submission.

21 It is my intention to get an order out sometime by
22 the end of next week.

23 MR. GILLMAN: Thank you, your Honor.

24 THE COURT: But if not, again, it'll be as
25 quickly as possible. All right?

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So as it now stands, the matter is under submission,
and the Court is adjourned. All right?

MS. MOCK: Thank you, your Honor.

MR. ZIRZOW: Thank you, your Honor.

MR. GILLMAN: Thank you, your Honor.

THE COURT: Thank you.

THE CLERK: All rise.

(Court concluded at 1:59:53 p.m.)

* * * * *

[illegible]

1 I certify that the foregoing is a correct transcript
2 from the electronic sound recording of the proceedings in
3 the above-entitled matter.

4
5
6 /s/ Biljana Garotic

05/21/14

7 Biljana Garotic, Transcriptionist

Date